No. 89-322

FILED
FEB 9 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Petitioner,

v.

THARON RAWSON, Individually and as Guardian Ad Litem for SETH RAWSON and CINDY RAWSON; BERNIECE JOHNSON, Individually and as Guardian Ad Litem for MICHAEL WAYNE JOHNSON, RUTH ELLEN JOHNSON and JOHN RUSSEL JOHNSON; LAURA DUNBAR, as Guardian Ad Litem for RICKINA ROSSITER and GLEN ROSSITER, JR.; and MARY WOOD, as Guardian Ad Litem for LESLIE D. WOOD,
Respondents.

On Writ of Certiorari to the Supreme Court of Idaho

JOINT APPENDIX

GEORGE H. COHEN
(Counsel of Record)
ROBERT M. WEINBERG
JULIA PENNY CLARK
BREDHOFF & KAISER
1000 Connecticut Ave., N.W.
Suite 1300
Washington, D.C. 20036
(202) 833-9340

BERNARD KLEIMAN
Suite 1910
One East Wacker Dr.
Chicago, IL 60601

CARL FRANKEL
Five Gateway Center
Pittsburgh, PA 15222

FREDERICK V. BETTS
PAUL D. CAREY
JAMES D. NELSON
BETTS, PATTERSON & MINES
1215 Fourth Avenue
Seattle, WA 98164
Attorneys for Petitioner

KENNETH B. HOWARD
(Counsel of Record)
KEVIN P. CASSIDY
HOWARD & OWENS, P.A.
P.O. Box 1578
Coeur d'Alene, ID 83814

LYOYD J. WEBB
WEBB, BURTON, CARLSON
& PEDERSON
P.O. Box 1768
Twin Falls, ID 83303

CARTWRIGHT, SUCHERMAN
& SLOBODIN
101 California St.
26th Floor
San Francisco, CA 94111
Attorneys for Respondents

PETITION FOR CERTIORARI FILED AUGUST 24, 1989
CERTIORARI GRANTED JANUARY 8, 1990

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
Chronological List of Relevant Docket Entries	2
Letter dated June 16, 1969 from Paul Schremp to Local Union	7
Letter dated January 5, 1970 from International Union to Local Unions with form response by Local 5084	9
Collective Bargaining Agreement dated March 11, 1970, between the Sunshine Mining Company and the United Steelworkers of America, Preamble, Article I ("Purpose and Intent of Parties"), Article II ("Union Security") § 1, Article VII ("Grievance and Arbitration"), Article IX ("Safety and Health") and Article XVI ("General") §§ 2, 3, 11, 12	15
Constitution of United Steelworkers of America, Article I, Article II and Article VII	24
Disaster Map of Sunshine Mine, May 2, 1972	29
Oral Deposition of Carl Griner taken October 16 and 18, 1973, page 17, line 20 through page 18, line 4; page 45, line 9 through page 46, line 1	30
Oral Deposition of Marvin C. Chase taken October 16, 1973, page 5, lines 13-20; page 73, line 6 through page 76, line 4	31
Oral Deposition of Merlin Hoffman taken October 17, 1973, page 8, lines 5-7; page 90, lines 10-24; page 92, lines 14-19	33
Oral Deposition of Lawrence L. Marshall taken October 17, 1973, page 4, lines 7-9; page 25, line 17 through page 26, line 11	34
Oral Deposition of Lavern Albert Melton taken October 17, 1973, page 3, line 25 through page 4, line 7; page 9, lines 1-16; page 19, line 20 through page 20, line 11; page 25, line 12 through page 27, line 4; page 29, line 18 through page 30, line 16; page 32, line 22 through page 33, line 10; page 44, line 17 through page 47 line 11; page 61, lines 17-25	35

TABLE OF CONTENTS—Continued

Page

First Interrogatories to Defendant United Steelworkers of America (Set No. 2) filed 1-13-75 and answered 2-19-75; interrogatories and answers numbers 11, 12, 13, 14, 22, 28, 39, 40, 44 and 45 42

Affidavit of Einar Pedersen in Support of Motion of Defendant United Steelworkers of America to Dismiss, or, Alternatively for Summary Judgment, dated August 12, 1975 46

Affidavit of Lawrence L. Marshall in Support of Motion of Defendant United Steelworkers of America to Dismiss, or, Alternatively for Summary Judgment, dated August 12, 1975 48

Opinion of District Court for the First Judicial District of the State of Idaho, in and for the County of Shoshone, dated January 29, 1976 [appearing at pages 161a-164a of Petition Appendix] .....

Opinion and Judgment of Idaho Supreme Court, dated September 13, 1979 [appearing at pages 107a-160a of Petition Appendix] .....

Amended Complaint, Demand for Jury Trial and Motion for Maintenance of Class Action, filed September 12, 1980 50

Defendant's Answer to Amended Complaint, filed April 25, 1983 72

Plaintiffs' Answers to Second Set of Interrogatories, filed May 10, 1983 80

Answers of United Steelworkers of America to Interrogatories to Defendants, filed May 31, 1983; interogatory and answer number 6 90

Oral Deposition of Lavern Albert Melton taken July 6, 1983, page 3, lines 19-23; page 15, line 2 through page 21, line 20; page 23, line 5 through page 27, line 25; page 36, line 8 through page 39, line 11; page 52, line 24 through page 53, line 25; page 68, line 1 through page 70, line 9 91

TABLE OF CONTENTS—Continued

Page

Oral Deposition of Austin Smith taken July 7, 1983, page 12, lines 2-21 105

Oral Deposition of Lawrence Marshall taken July 7, 1983, page 9, line 2 through page 11, line 17; page 12, lines 1-20; page 13, line 6 through page 17, line 24; page 24, line 1 through page 27, line 20; page 28, line 1 through page 30, line 8; page 30, line 15 through page 40, line 18; page 53, lines 11-23; page 54, line 9 through page 56, line 21; page 57, lines 5-8 and 21-25; page 58, lines 1-19 105

Oral Deposition of Adolph Schwartz taken July 12, 1983, page 46, lines 1-23; page 60, lines 3-4; page 82, lines 6-20; page 84, lines 21-23; page 85, lines 1-4 and 16-23; page 86, lines 1-11; page 87, lines 9-13, 15 and 22-23; page 88, lines 1-14; page 89, lines 6-23; page 90, lines 1-17; page 91, lines 13-15 and 22-23; page 92, lines 1-4 and 7-12 126

Exhibit Number 1 to the Schwartz Deposition 131

Exhibit Number 2 to the Schwartz Deposition 156

Affidavit of Lavern A. Melton in Support of Defendant Steelworkers' Motion for Summary Judgment, or Alternatively, for Partial Summary Judgment, dated August 13, 1983 178

Affidavit of Lawrence L. Marshall in support of Defendant Steelworkers' Motion for Summary Judgment, or Alternatively, for Partial Summary Judgment, dated August 15, 1983 189

Oral Deposition of Gordon Osterberg taken October 17, 1983, page 37, line 1 through page 38, line 7; page 48, line 4 through page 49, line 12 191

Oral Deposition of Kenneth Riley taken October 17, 1983, page 11, line 23 through page 12, line 23; page 43, line 9 through page 45, line 15; page 66, line 2 through page 69, line 3; page 70, lines 6-8 and 18-23; page 73, lines 14-23 193

TABLE OF CONTENTS—Continued

Page

Oral Deposition of Donald Long taken October 18, 1983, page 23, line 13 through page 26, line 7 198

Oral Deposition of Albert C. Walkup taken October 18, 1983, page 5, line 15 through page 7, line 14; page 9, lines 9-17; page 10, line 4 through page 14, line 6; page 17, lines 15-21; page 23, lines 1-12; page 32, line 13 through page 33, line 12 200

Oral Deposition of Larry Hawkins taken October 19, 1983, page 22, lines 6-14; page 33, line 3 through page 34, line 5 206

Oral Deposition of Leslie Merrial Mossburgh taken October 19, 1983, page 3, line 21 through page 4, line 1; page 6, line 1 through page 8, line 15; page 10, lines 9-25; page 19 lines 1-21; page 21, line 3 through page 22, line 19 207

Oral Deposition of Merlin Milton Hoffman taken October 19, 1983, page 4, line 12 through page 5, line 3; page 20, lines 12-21; page 24, line 2 through page 28, line 18 212

Oral Deposition of Robert Matthews taken October 20, 1983, page 6, line 2 through page 7, line 23 216

Oral Deposition of Richard Nickelby taken October 20, 1983, page 6, lines 1-22; page 15, lines 14-24; page 17, lines 9-20; page 23, lines 3-13 217

Oral Deposition of Robert Follette taken October 20, 1983, page 7, line 1 through page 9, line 16 219

Opinion of District Court for the First Judicial District of the State of Idaho, in and for the County of Shoshone, dated November 1, 1983 [appearing at pages 89a-106a of Petition Appendix] .....

Opinion and Judgment of Idaho Supreme Court, dated February 24, 1986 [appearing at pages 49a-88a of Petition Appendix] .....

TABLE OF CONTENTS—Continued

Page

Opinion and Judgment of Idaho Supreme Court, dated September 4, 1986 [appearing at pages 13a-48a of Petition Appendix] .....

Opinion and Judgment of the Idaho Supreme Court, dated December 22, 1988 [appearing at pages 1a-12a of Petition Appendix] .....

IN THE DISTRICT COURT
OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF SHOSHONE

Case No. 17694

THARON RAWSON, Individually and as Guardian ad Litem for her minor Children, SETH RAWSON and CINDY RAWSON, heirs of JOHN R. RAWSON, deceased,
Plaintiffs,

v.

UNITED STEELWORKERS OF AMERICA,
an unincorporated association;
and STATE OF IDAHO,
Defendants.

Case No. 17741

BERNIECE JOHNSON, Individually and as Guardian ad Litem for MICHAEL WAYNE JOHNSON, RUTH ELLEN JOHNSON and JOHN RUSSELL JOHNSON, minor children; and CHRISTINE JOHNSON and DONALD JOHNSON, heirs of WAYNE LYLE JOHNSON, deceased,
Plaintiffs,

v.

UNITED STEELWORKERS OF AMERICA,
an unincorporated association;
and STATE OF IDAHO,
Defendants.

Case No. 17742

LAURA DUNBAR, as Guardian ad Litem for RICKINA ROSSITER and GLEN RAYMOND ROSSITER, JR., her minor children, heirs of GLEN RAYMOND ROSSITER, deceased,
Plaintiffs,

v.

UNITED STEELWORKERS OF AMERICA,
an unincorporated association;
and STATE OF IDAHO,
Defendants.

Case No. 18222

MARY WOOD, as Guardian ad Litem for LESLIE D. WOOD, her minor child, heir of DON B. WOOD, deceased,
Plaintiffs,

v.

UNITED STEELWORKERS OF AMERICA, an unincorporated association; and STATE OF IDAHO,
Defendants.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Date	PROCEEDINGS
03-12-73	Complaint in *Rawson*, Civil No-17694 [Substantially identical complaints were filed the same day in *Johnson*, Civil No. 17741, and *Dunbar*, Civil No. 17742]
08-28-73	Answer of Defendant United Steelworkers of America
08-25-75	Motion of Defendant United Steelworkers of America to Dismiss, or, Alternatively, for Summary Judgment
02-02-76	Memorandum Decision and Order [Dated January 29, 1976, granting defendant United Steelworkers of America's Motion for Summary Judgment]
04-01-76	Notice of Appeal
09-14-79	Opinion and Judgment of the Idaho Supreme Court [dated September 13, 1979]
09-12-80	Amended Complaint, Demand for Jury Trial and Motion for Maintenance of Class Action in *Rawson*, Civil No. 17694 [Substantially identical amended complaints were filed on the same day in *Johnson*, Civil No-17741, *Dunbar*, Civil No. 17742, and *Wood*, Civil No. 18222]

Date	PROCEEDINGS
10-06-80	Motion to Amend Complaint and Notice of Hearing
07-02-81	Memorandum Opinion [dated June 30, 1981, denying plaintiffs' motion to amend complaint to state a class action, but not ruling on the amendment of the complaint in other respects]
03-31-83	Order in re: Motion to Strike Amended Complaint and Motion to Amend Complaint [denying plaintiffs' motion to amend complaint to add new plaintiffs, but granting plaintiffs' motion to amend complaint as filed on September 12, 1980 to add claims for gross negligence, fraud and constructive fraud]
04-25-83	Defendant's Answer to Amended Complaint
08-15-83	Motion of Defendant United Steelworkers of America, AFL-CIO-CLC, for Summary Judgment or, Alternatively, for Partial Summary Judgment
11-02-83	Order in re: Motion for Summary Judgment [dated November 1, 1983, opinion granting defendant's Motion for Summary Judgment]
11-18-83	Judgment
12-13-83	Notice of Appeal
06-15-89	Motion of Defendant United Steelworkers of America to Stay Proceedings Pending Disposition of its Petition for Writ of Certiorari
09-18-89	Order [granting defendant's Motion to Stay Proceedings subject to modification]

IN THE SUPREME COURT
OF THE STATE OF IDAHO

Case No. 15338

THARON RAWSON, individually and as Guardian ad Litem for her minor Children, SETH RAWSON and CINDY RAWSON, heirs of JOHN R. RAWSON,
Plaintiff-Appellant,

v.

UNITED STEELWORKERS OF AMERICA,
an unincorporated association,
Defendant-Respondent.

BERNIECE JOHNSON, individually and as Guardian ad Litem for MICHAEL WAYNE JOHNSON, RUTH ELLEN JOHNSON and JOHN RUSSELL JOHNSON,
Plaintiff-Appellant,

v.

UNITED STEELWORKERS OF AMERICA,
an unincorporated association,
Defendant-Respondent.

LAURA DUNBAR, as Guardian ad Litem for RICKINA ROSSITER and GLEN RAYMOND ROSSITER, JR., minor heirs of GLEN RAYMOND ROSSITER,
Plaintiff-Appellant,

v.

UNITED STEELWORKERS OF AMERICA,
an unincorporated association,
Defendant-Respondent.

MARY WOOD, as Guardian ad Litem for LESLIE D. WOOD, her minor child, heir of DON B. WOOD, deceased
Plaintiff-Appellant,

v.

UNITED STEELWORKERS OF AMERICA,
an unincorporated association,
Defendant-Respondent.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Date	PROCEEDINGS
12-23-83	Filed Notice of Appeal
02-24-86	Filed Case Opinion
02-24-86	Appeal Description ** Appeal from an Order Granting Summary Judgment to the United Steelworkers of America in an Action for Wrongful Death. **Affirmed**
03-17-86	Filed Petition for Rehearing by APPS
04-25-86	Entered Order granting Petition for Rehearing filed by Appellants. Granted ** On the single issue discussed in part II of the Opinion concerning the negligence claim**
09-04-86	Filed Substituted Case Opinion on Rehearing. ** 1986 Opinion No. 30, issued 2-24-86, is hereby withdrawn and this Opinion is substituted therefore**
09-04-86	Appeal Description ** Appeal from an Order granting Summary Judgment to the United Steelworkers of America in an action for wrongful death. ** Affirmed in part, reversed in part and remanded**
12-12-86	Filed Notice of Filing Petition for Certiorari in the U.S. Supreme Court

Date	PROCEEDINGS
06-05-87	Filed copy of Letter/Order granting Petition for a Writ of Certiorari. The Judgment is vacated and the case is remanded to the Supreme Court of Idaho
07-23-87	Case reopened per U.S. Supreme Court Order on Remand
07-23-87	Entered Order pursuant to the Mandate of the U.S. Supreme Court that the remittiture heretofore issued by the Court on the 23rd day of October, 1986, be, and it hereby is, vacated and the Court hereby reasserts jurisdiction of this appeal. Ordered that the Appeal will be reheard and reconsidered in light of the opinion in International Brotherhood of Electrical Workers, AFL-CIO v. Hechler, 481 US —— (1987)
12-22-88	Filed case Opinion on Remand from Writ of Certiorari
12-22-88	Appeal description ** on remand from the United States Supreme Court following Grant of Writ of Certiorari on Issue of Preemption under Labor Management Relations Act. Held: Claim under Idaho tort law is not federally preempted
01-10-89	Filed Petition for Rehearing by Respondent
04-19-89	Entered Order Denying Petition filed 1-10-89 for rehearing
09-01-89	Filed Notice of Filing Petition for Certiorari in the U.S. Supreme Court

UNITED STEELWORKERS OF AMERICA

AFL-CIO-CLC

1500 Commonwealth Building
Pittsburgh, PA. 15222

June 16, 1969

TO: ALL LOCAL UNION
RECORDING SECRETARIES

Dear Sir and Brother:

In accordance with the recommendations of the International Executive Board Safety and Health Committee, the Safety and Health Department is now being reorganized. At a later date, Workmen's Compensation will be incorporated in this department.

President Abel has assigned me to direct the department, and Marco Vestich and Adolph Schwartz will serve as my assistants. Jo-Anne Damian will be the Departmental Secretary.

Currently, we are in the process of examining existing policies and formulating new policies and procedures.

The need for high standards in the Safety and Health fields are evident by the following facts. According to the National Safety Council there were more disabling injuries and deaths in the work situation that were due to motor vehicle accidents in the first 6 months of 1967. Furthermore, it is reported that there were roughly 30 times as many people injured at work in the United States as were injured in Vietnam during the same period. In 1966 there were ten times more man days lost due to injury than were lost because of strikes. These figures are startling. However, it has been demonstrated that in those districts of our International Union where a firm Safety and Health program have been adopted the number of cases of industrial accidents and illness have been reduced significantly.

It is our objective to make all the industrial establishments organized by our International Union healthier, and safer places to work.

In a short time you will receive correspondence from this office that will outline the general Safety and Health policy of our International Union, and the procedures that should be taken by our local unions to implement this policy.

Fraternally yours,

/s/ Paul E. Schremp
PAUL E. SCHREMP
Director
Safety and Health Department

UNITED STEELWORKERS OF AMERICA

AFL-CIO-CLC

1500 Commonwealth Building
Pittsburgh, PA. 15222

January 5, 1970

TO: ALL USWA LOCAL UNION
RECORDING SECRETARIES

Dear Sir and Brother:

It is essential to your Safety and Health Department that the enclosed form, "Annual Report" be filled out accurately and promptly, this to ensure prompt responses to inquiries that will come to the Department from all areas within our jurisdiction.

It is well at this point to remember that the jurisdiction of the United Steelworkers of America includes the United States, Canada, Puerto Rico and the Virgin Islands and a membership of 1,200,000.

As stated at the National Safety Conference in Chicago, Illinois, on November 10 and 11, 1969 the procedures and lines of communication so necessary to a successful Safety and Health Program must be maintained at all times.

The proper filling out of the enclosed form will enable your Safety and Health Department to contact the proper people so the best of all service can be rendered to our membership.

In the event the form is not filled out and returned to your Safety and Health Department, it is entirely possible that long delays can be encountered when questions are asked of the Department or when assistance is called for; this, of course, is not in the best interest of the membership we serve.

The questions on the form have much meaning to the Department. In the event the answer to the question: Does your Company bring employees in to work, after an accident and then not assign them anything to do, means, they are cheating on the Frequency and Severity rates. This, perhaps, trying to make a good showing to the home office or to win some type of Safety Award.

In the event your answer shows that your company doesn't keep Frequency or Severity rates indicates to your Safety and Health Department their true regard for accident prevention and the elimination of health hazards.

As stated on the form, in the event you need help in filling out the form, please contact your Staff Representative to help you fill it out.

Please PRINT ALL NAMES AND ADDRESSES on the form.

Return the form to:

Mr. Paul E. Schremp, Director
Safety and Health Department
1500 Commonwealth Building
Pittsburgh, Pennsylvania 15222

UNITED STEELWORKERS OF AMERICA

Safety and Health Department
Annual Report Local Union Safety and Health Committee

(Please Print All Names and Addresses)

Local Union No. _____ District No. _____

Number of Members _____

Staff Representative _____ Phone No. _____

District S & H Co-ordinator _____ Phone No. _____

L. U. President _____ Phone No. _____

L. U. S & H Chairman _____ Phone No. _____

Total number of members on the Safety and Health Committee _____

When does your Contract expire? _____

Name of your Company _____

Products Manufactured _____

Company phone number _____

Does your Company employ an Industrial Engineer or an Industrial Hygienist: Yes ☐ No ☐

Are members of the Safety and Health Committee docked pay while they are investigating Safety and Health Problems for the Local: Yes ☐ No ☐

Does your Company cooperate with your Safety and Health Committee:

Yes ☐ No ☐

In the event the answer is "No" explain on the back of this form.

Does your Company belong to the National Safety Council? Yes ☐ No ☐

Does your Company keep accident frequency and severity rates: Yes ☐ No ☐

If the answer is yes, what are they?
Frequency ———— Severity ————

Does your Company bring employees to work, after an accident and then not assign them anything to do: Yes ☐ No ☐

In the event it is felt that help is needed with this form, we suggest that the Staff Representative be contacted for assistance.

METHOD OF RECORDING AND MEASURING WORK INJURY EXPERIENCE

FREQUENCY-SEVERITY

FREQUENCY RATE

The disabling injury frequency rate is based upon the total number of deaths, permanent total, permanent partial, and temporary total disabilities which occur during the period covered by the rate.

The period covered by the rate can be for a month, quarter, six months or for a year. The rate is determined by use of the following formula:

$$\frac{\text{number of disabling injuries X 1,0000,000}}{\text{employee-hours of exposure}} = \text{Frequency}$$

Let us assume that a plant has 9 disabling injuries during the last six months of the year, then, the frequency rate equals 9 (number of disabling injuries) X 1,000,000 or 9,000,000, divide this product by 3,000,000 (total number of employee-hours worked during the six month period), the frequency in this example is 3.0.

In other words, disabling injuries are occurring at the rate of 3 for each million employee-hours worked.

SEVERITY RATE

The disabling injury severity rate is based on the total of all scheduled charges for all deaths, permanent total, and permanent partial disabilities, plus the total days of disability from all temporary total injuries which occur during the period covered by the rate.

The period covered by the rate, for severity calculation, can be for the same periods of time as for the frequency calculation purposes. This rate is determined by use of the following formula:

$$\frac{\text{total days charged X 1,000,000}}{\text{employee-hours of exposure}} = \text{Severity}$$

Let us assume that a plant had the following injury experience during a year.

One fatality, specific charge 6,000 days. One permanent partial disability, (50 per cent loss of use of the index finger), specific charge 200 days. Five temporary total disabilities, 100 days specific charge. Total days charged 6,300. During this period of time the plant worked 2,100,000 hours, 6,300 X 1,000,000 = 6,300,000,000 divide this product by 2,100,000, the man hours worked, gives a severity of 3,000.

COLLECTIVE BARGAINING AGREEMENT DATED MARCH 11, 1970 BETWEEN THE SUNSHINE MINING COMPANY AND THE UNITED STEELWORKERS OF AMERICA

AGREEMENT

THIS AGREEMENT, made and entered into this 11th day of March, 1970, is by and between SUNSHINE MINING COMPANY (hereinafter referred to as the "COMPANY") and the UNITED STEELWORKERS OF AMERICA, and its LOCAL 5089 (hereinafter referred to as the "UNION") as the bargaining representatives of the Employees of SUNSHINE MINING COMPANY (as hereinafter defined) with respect to the Company's operation known as the "SUNSHINE MINE", located on Big Creek, Shoshone County, Idaho.

ARTICLE I

Purpose and Intent of the Parties

The purpose of this Agreement is to set forth rates of pay, hours of work and other conditions of employment to promote orderly and peaceful relations between the Company and its employees, to achieve uninterrupted production from the Company's operation and to achieve the highest level of employee performance and compensation consistent with safety, good health and sustained effort.

The Company and the Union encourage the highest possible degree of friendly, cooperative relationships between their respective representatives at all levels and with and between all employees. The officers of the Company and the Union realize that this goal depends on more than words in a labor agreement, that it depends primarily on attitudes between people in their respective organizations and at all levels of responsibility. They believe that proper attitudes must be based on full understanding of and regard for the respective rights and

responsibilities of both the Company and the Union. They believe also that proper attitudes are of major importance in the local plant where day-to-day operations and administration of the Labor Agreement demand fairness and understanding. They believe that these attitudes can be encouraged best when it is made clear that Company and Union officials, whose duties involve negotiation of this Labor Agreement, are not anti-union or anti-company, but are sincerely concerned with the best interests and well-being of the business and all employees.

ARTICLE II

Union Security

1. The Company recognizes the Union as the exclusive bargaining agency for all production and maintenance employees of the Company (excluding all electricians, executive, professional, technical, and clerical employees, guards and supervisors) as defined in the Act and determined by the National Labor Relations Board, Seattle, Washington, Case No. 19-RC-1510 on July 29, 1954. Wherever used in this Agreement, the word "employee" or the word "employees" shall mean members of the foregoing defined unit.

• • • •

ARTICLE VII

Grievance and Arbitration

Any question or dispute concerning compliance by either party with, or interpretation or application of this Agreement or concerning wages, hours, and other terms and conditions of employment, shall be treated as a claimed grievance in the sequence outlined as grievance procedure until settled. Should an agreed settlement be lacking at the final stage of the grievance procedure, said claimed grievance may then be referred by either party

to arbitration. The Arbitrator's decisions made within the scope of the submission and authority of the Arbitrator shall be final and binding on all parties.

—Grievance Procedure—

1. Step (1)

   The employee claiming a grievance shall present his case either directly, or through a member of his grievance committee to his immediate supervisor.

   Step (2)

   Failing a settlement, the grievance shall be presented through a member of the grievance committee to the department head.

   Step (3)

   Failing a settlement in Step 2, the grievance shall be submitted in writing by the Grievance Committee Chairman to the Personnel Director. At the conclusion of Step 3, a written statement of the position of the parties upon the written issues presented in Step 3, shall be exchanged by the chairman of the grievance committee and the Personnel Director.

   Step (4)

   If no settlement is reached in Step 3, the grievance will be submitted in writing to the Plant Manager by the Grievance Committee Chairman. At the hearing in this stage, a staff representative of the International Union may be present.

2. A grievance claim may be heard during working hours when necessary.

3. A claimed grievance may originate with the company and this class of grievance shall be taken up in Step 3 of this Grievance Procedure.

4. Grievance claims must be made orally in Step 1 within twenty-four (24) hours of the time the em-

ployee would reasonably be expected to be aware of the incident, excluding Sundays, holidays, scheduled days off, or lost time due to the injury of the claimant on the job. In the event the claimant is off an extended period of time, the grievance must be presented within two (2) weeks of the incident.

If no answer is received from the supervisor within forty-eight (48) hours or settlement fails in Step 1, submission in Step 2 must be made within five (5) days of the presentation of the grievance in Step 1.

If no answer is received within five (5) days of presentation in Step 2, submission to Step 3 must be made in writing within another five (5) days or appeal from the answer in Step 2 must be made in writing to Step 3 within five (5) days after the answer is received. An answer in Step 3 must be given within seven (7) days from the date of submission in Step 3.

Submission in Step 4 must be made in writing within five (5) days after receipt of the answer in Step 3 and a hearing and an answer must be given within another ten (10) days.

The time limitations applicable after presentation in Step 1 are exclusive of Saturdays, Sundays and holidays. Failure on the part of the Union to submit the grievance within the above time limits or on the part of the Company to give an answer in Step 3 or Step 4 within the above time limits unless postponed by mutual agreement in writing between the Grievance Committeeman and Company Official concerned shall forfeit the grievance.

5. Failing a settlement of a claimed grievance in Step 4, either party may refer the matter to arbitration within thirty (30) calendar days after receipt of the answer in Step 4. This 30-day period may be extended by mutual agreement in writing. The parties

will attempt to join in a written submission defining the issue, or issues to be arbitrated, but if the parties are unable to agree on a submission, then each party may file with the Arbitrator, its version and he shall determine the issues, subject always to the scope of this Agreement. The issue or issues to be submitted for arbitration shall be limited to the issue or issues submitted in Step 4 of the grievance procedure.

6. The Arbitrator shall be selected from a list of impartial arbitrators submitted by the Federal Mediation and Conciliation Service.

   From the list submitted by the agency above designated, each party will separately advise the agency of its order of preference by crossing off the names to which he objects and numbering the remaining names in order of preference. Should this procedure fail to result in the appointment of an arbitrator, an additional list or lists shall be requested until an appointment is made.

7. The Arbitrator shall not have the authority to alter or to add to the terms of this Agreement or the wage scales which are a part hereof.

8. The Arbitrator shall not have the authority to go beyond the submission. Any case referred to the Arbitrator on which the Arbitrator has no power or authority to rule shall be referred back without decision.

9. Should the Arbitrator order a discharged employee reinstated, said Arbitrator may order said reinstatement with or without back pay, consistent with the circumstances of the discharge.

10. The expense of the Arbitrator shall be paid half by the Company and half by the Union.

11. The scope of this Article is limited as defined herein and shall not be construed to apply to wage issues (except as provided for in Article III, Section 2), or disagreements of any kind arising out of or in the course of contract negotiations.

• • • •

ARTICLE IX

Safety and Health

1. The Company and the Union will continue to cooperate toward the objective of eliminating accident and health hazards. The Company shall continue to make reasonable provisions for the safety and health of its employees at the plant during the hours of their employment. Protective devices, wearing apparel, and other equipment necessary to protect employees from injury shall be provided by the Company in accordance with practices now prevailing in each separate department or as such practices may be improved from time to time by the Company.

2. An employee who believes that he is being required to work under conditions which are unsafe beyond the normal hazards inherent in the operation in question, may request an immediate meeting with the shift boss, with or without consultation with his Assistant Grievance Committeeman. If, as a result of these actions, the employee still believes he is being required to work under conditions which are unsafe beyond the normal hazards inherent in the operation in question, a committee consisting of two (2) supervisory personnel and two (2) reliable employees, approved by the Union, shall inspect the operation in question within twenty-four (24) hours and shall decide what steps, if any, are necessary to correct the hazard.

In the event the committee cannot agree, the employee involved may then file a grievance in Step 2 of the grievance procedure. It is understood and agreed that if a grievance is filed on an unsafe working condition, management and Union representatives shall give said grievance preferred handling, and shall expedite its movements through the grievance procedure.

The employee may on request, be relieved from the job and be assigned to other work at the discretion of the Company. If an employee exercises his rights under this section and the Company believes conditions are not beyond the normal hazards inherent in the operation in question, nothing contained in this section shall abridge the rights of the Company under other sections of this Agreement.

Neither shall the foregoing preclude the Company from assigning another employee to the job in question and it is further understood that no employee, other than communicating the facts, shall take any steps to prevent another from working on the job.

3. A Safety Committee consisting of three employees designated by the Union and three Management members designated by the Company shall be established. By mutual agreement, the committee may be increased to not more than six representatives for each party. The safety committee shall hold regular meetings at times determined by the committee. The function of the safety committee shall be to advise with the Plant Manager concerning safety and health matters but not to handle grievances. In the discharge of its function the safety committee shall: Consider existing practices and rules relating to safety and health, formulate suggested changes in existing practices and rules, and recommend adoption of new practices and rules. Advices of the safety committee, together with supporting sugges-

tions, recommendations and reasons shall be submitted to the Plant Manager for his consideration and for such action as he may consider consistent with the Company's responsibility to provide for the safety and health of its employees during the hours of their employment and the mutual objectives set forth in Section 1.

4. A Union member and a Management member of the safety committee may accompany the State Mine Inspector or his Deputy, on any inspection made at the property.

5. Two men shall be designated by the Union to accompany the Safety Engineer on tours of the mine. Once each month, one of these two men, together with the Safety Engineer, shall make a tour of a section of the mine. The results of this tour shall be considered at the following Union-Management safety committee meeting.

6. In the event a recommendation with respect to safety conditions that needs action immediately, concurred in by a majority of the entire committee, is not carried out, the Union may have recourse to the grievance procedure.

• • • •

ARTICLE XVI

General

• • • •

2. Employees will be required to conform to all rules and regulations now or hereafter set forth by the Company, provided, however, that such rules and regulations shall not be in conflict with the terms and provisions of this Agreement and provided further that an alleged conflict may be subject to the Grievance and Arbitration Procedure.

3. The management of the Company's property being vested exclusively in the Company, the Company has,

subject to the provisions of this Agreement, the sole direction of the working forces, including among others the right to hire, discipline and discharge for cause, to assign work, to determine qualifications, to effect job changes, to determine the equipment to be used and to expand, curtail, suspend, or resume operations.

• • • •

11. The parties specifically waive their rights to request bargaining under Section 8(d) of the Labor-Management Relations Act of 1947 with respect to matters not specifically covered by this Agreement and dealing with wages, hours and other terms and conditions of employment, for the life of this Agreement.

12. This Agreement, which becomes effective as of March 11, 1970, shall remain in full force and effect until twelve P.M. (12:00 P.M.) midnight, March 10, 1973, and shall renew itself for a period of one (1) year, from year to year thereafter unless either party submits a notice of termination in writing to the other party not less than sixty (60) days nor more than ninety (90) days prior to March 11, 1973, or the March 11 expiration date of each year thereafter.

• • • •

CONSTITUTION OF INTERNATIONAL UNION UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC

Adopted at Atlantic City, N.J., October, 1970

ARTICLE I

Name

This Organization shall be known as the United Steelworkers of America, hereinafter also referred to as the International Union. This document shall be known as the Constitution and By-Laws of the United Steelworkers of America and it shall also be the Constitution of each Local Union chartered by the International Union.

ARTICLE II

Objects

First. To unite in this industrial union, regardless of race, creed, color or nationality, all workers and working men and working women eligible for membership, employed in and around and in transportation related to iron, steel, aluminum, non-ferrous metal and allied manufacturing, mining, processing, and fabricating mills, factories and establishments in the United States and its territories, Canada, and insular areas adjacent thereto.

Second. To establish through collective bargaining adequate wage standards, shorter hours of work and improvements in the conditions of employment for workers in industry.

Third. To engage in educational, legislative, political, civic, social, welfare, community and other activities; to advance and safeguard the economic security and social welfare of workers in industry, the International Union, its Local Unions and the free labor movements of the United States, Canada and the world; to protect and extend our democratic institutions and civil rights and liberties; and to perpetuate and extend the cherished traditions of democracy and social and economic justice in the United States, Canada and the world community.

Fourth. To function as an autonomous International Union affiliated with other international unions in national and international federations in the United States, Canada and the free world, to unify and solidify the International Union, its Local Unions and the entire labor movement, and to provide financial and other aid and assistance to labor and other organizations in the United States, Canada and other parts of the world.

Fifth. To take all steps and actions consistent with the Constitution and policies of the International Union, to implement and carry out the objects, rights, activities and responsibilities of this organization.

ARTICLE VII

Local Unions

Section 1. Ten (10) or more persons eligible for membership in the International Union shall constitute a Local Union upon receipt of a charter from the International Secretary-Treasurer under the terms herein provided.

Sec. 2. Upon approval of the charter application by the International Officers, subject to review by the International Executive Board, the International Secretary-Treasurer shall issue to the applicants a Local Union charter which shall contain such provisions as the International Union may require; he shall also deliver to said applicants one Local Union seal and such other initial supplies as may be necessary to conduct the affairs of the Local Union.

Sec. 3. No Local Union shall be dissolved, except with the approval of the International Executive Board.

Sec. 4. The Local Unions shall be charged with the duty of enforcing this Constitution as affecting their membership.

The funds and property of the Local Union shall be managed, invested, expended or otherwise used to implement and carry out the objects, rights, activities and responsibilities of the Local Union or the International Union, and to administer the affairs of the Local Union, in accordance with the Constitution and policies of the International Union and the By-Laws of the Local Union.

Sec. 5. Local Unions may adopt, subject to approval by the International Union, such by-laws and rules as do not conflict with any of the provisions of this Constitution or the policies of the International Union. Local Unions which do not adopt such by-laws shall be deemed to have adopted the standard By-Laws for Local Unions issued by the International Union.

Notwithstanding any provisions of the Constitution to the contrary, the International Executive Board shall issue rules and special by-laws governing Amalgamated Local Unions.

Notwithstanding any provisions of the Constitution to the contrary, the International Executive Board shall issue special by-laws for Local Unions representing Great Lakes seamen in the lake transportation industry to deal with the special needs, circumstances and conditions of members in this industry on such matters as Local Union and International Union elections, conduct of meetings, formation of committees, duties of Local Union officers, and trial of members.

Sec. 6. Local Unions shall hold a general membership meeting at least once every month.

Sec. 7. All Local Unions are required to affiliate with the appropriate central and local bodies chartered by the Federation.

Sec. 8. All Local Union Officers and Grievance Committeemen shall be elected for a term of three (3) years at the last meeting in June commencing June, 1973 by a

plurality vote of the members participating in a referendum vote, and shall serve until their successors are elected and qualified, at which time all money, official records and documents, and all property belonging to the Local Union shall be turned over to such successors.

The date of Local Union elections for Local Union Officers and Grievance Committeemen must be advertised among members at least fifteen (15) days previous to the date of the election by mailing notice of the date, place and hours of the election to each member in good standing at his last known home address. The notice must also specify the Local Union offices to be filled. Nominations shall be made at the immediately preceding meeting. Notice of the nominations meeting shall be given to the membership at least one (1) week in advance of the meeting.

The requirements regarding method of election and notices may be modified for Local Unions in Canada by the International Executive Board.

No member shall at the same time be a candidate for or hold more than one of the following offices: President, Vice President, Recording Secretary, Financial Secretary, Treasurer, Guide, Guard, and Trustee.

Sec. 9. No member shall be eligible for election as a Local Union Officer or Grievance Committeeman unless

(a) He shall have been in continuous good standing for a period of twenty-four (24) months immediately preceding the election, or if his Local Union has been in existence for a lesser period prior to the election, he must have been in continuous good standing from the time that he joined such Local Union; and

(b) He is employed in a plant or mill or other place within the jurisdiction of the Local Union; and

(c) He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36)

months previous to the June, 1973, election, unless his Union activities or working hours prevented his attendance.

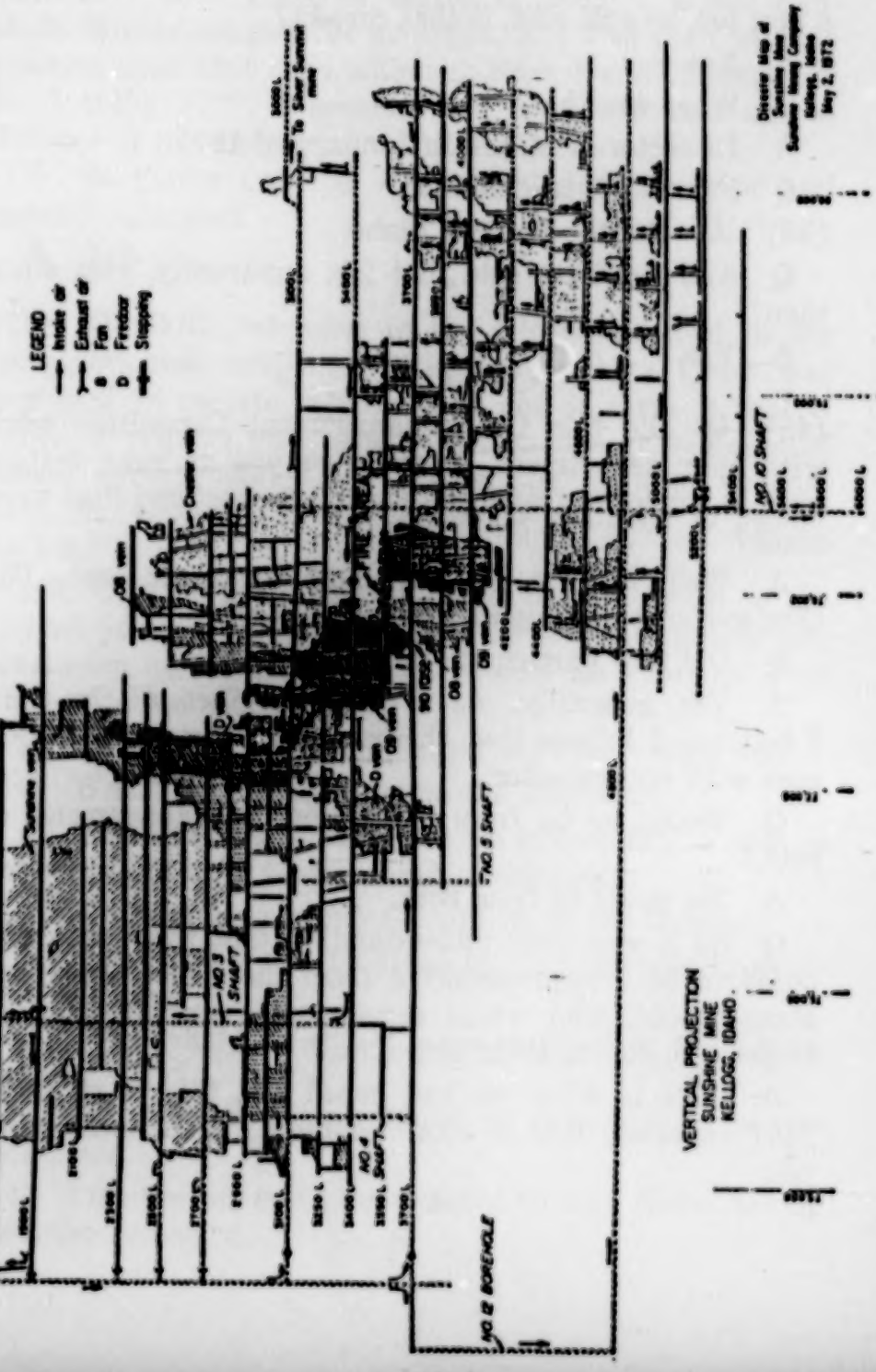
Sec. 10. A Workmen's Compensation Committee and a Safety and Health Committee, under the direction of the International Union or its designated representative, shall be established in each Local Union.

Sec. 11. A Civil Rights Committee, under the direction of the International Union or its designated representative, shall be established in each Local Union to implement our Union's commitment to the protection and extension of civil rights and liberties.

* * * *

DISASTER MAP OF SUNSHINE MINE

May 2, 1972



ORAL DEPOSITION OF CARL GRINER
TAKEN OCTOBER 16 AND 18, 1973

[17] Q All right, now, apparently in 1970 you took a new job, or new post, is that correct?

A Yes.

Q What was that?

A Inspector of Mines, in January of 1971.

Q For the State of Idaho?

[18] A For the State of Idaho.

Q And you have held that job, apparently, ever since then?

A Yes.

• • • •

[45] Q Did this Union-Management Committee work with your department, either with you or your inspectors, in connection with the various inspections that were made?

A Well, I'm not just sure how you mean that. Did they cooperate, is this what your asking?

Q Did they participate in the inspections?

A Yes, generally. As a matter of fact all the time, I believe. I believe that there was a Safety Committeeman with my inspector.

Q Would he be from the Union or Management, or both?

A He would be from both.

Q So it was your understanding that there was supposed to be a representative from the Union and from Management, who would accompany your inspector, or inspectors, during their inspection?

A This is what we had hoped for, this is what we [46] expected, this is what we requested in most cases, yes.

• • • •

ORAL DEPOSITION OF MARVIN C. CHASE
TAKEN OCTOBER 16, 1973

• • • •

[5] A • • • Then, in March of 1969, I joined Sunshine Mining as general manager, and I've been in that position since that time, although since Mr. McManus left in, I think 1970, I became vice president, and also a director of the company.

Q So you're curently a vice president, director and general manager?

A Yes.

• • • •

[73] Q With reference to the allegations filed in the complaint, they have alleged the Steelworkers' Union was negligent in certain regards, and one of them is that it failed to require mine evacuation on fire or evidence of smoke underground. Now this matter of mine evacuation, Mr. Chase, is a matter for the company to decide, isn't it?

MR. CARTWRIGHT: I'll object to that, again on the ground you're once again calling for a legal opinion and conclusion on the part of this witness as to whose duty and obligation this was.

MR. FULLER: Ask him what his observation was.

Q Would you please answer the questions.

A The company would order an evacuation; a man is not obliged to work under unsafe conditions.

Q We're talking about evacuation at the time—

A The order would be given by management to evacuate the mine.

Q You would not expect some member of the Union to order that?

[74] A No, I would not expect it; or to stay in an unsafe place.

Q I'm sure none of them wanted to stay there, not by pleasure or choice.

Q Now, in reference to the matter of fire drills, that is a matter that would be conducted by the company, would it not?

MR. CARTWRIGHT: I'm going to object to that unless the purport of your question is whether or not the drills themselves would be conducted by the company, as distinguished from the Union.

Q Will you answer the question, please.

A The company would conduct fire drills, if such were to be conducted.

Q These fire drills would be conducted within the mine itself? Wouldn't they have to be there?

A Yes.

Q Rather than outside on the surface?

A Yes.

Q In reference to requiring personnel to—personal protective equipment, that again is something that the company would be ordering and directing to be used, would it not, Mr. Chase?

A Are you speaking of self rescuers?

Q Yes.

[75] A The company had ordered and placed them there for the use of the men.

Q And the company furnished that type of safety device, didn't it?

A Yes, we did.

Q And again you would not expect the Union itself to be furnishing that type of device would you?

A I would not.

Q And would you—would the company be maintaining that type of epuipment?

A We did maintain it.

Q And again you would not expect any of the individual workmen to be maintaining it, would you, sir?

A Except that he should report any unsafe conditions.

Q But other than that he wouldn't be required to maintain it or see that it was in good condition?

A I wouldn't expect him to.

Q Would the Union—strike that. Would the company have control of and handle all matters relative to the disposition of used timbers used underground?

A Yes, they would.

Q And where they put them, and what they did with them would be under your control and supervision, would it not?

A Yes, sir.

[76] Q As far as the Union itself is concerned, you would not expect it, the Union, to take part in the disposition or handling of those timbers?

A Just to follow orders.

• • • •

ORAL DEPOSITION OF MERLIN HOFFMAN TAKEN OCTOBER 17, 1973

• • • •

[8] Q When you were hired by Sunshine in 1968 you were hired as a safety engineer at that time?

A Yes, sir.

• • • •

[90] Q Mr. Hoffman, are you aware—do you know of any affirmative thing that any members of the union did that was the cause of, or affected the fire, or the ultimate death of these men?

A You're asking if I know of anybody that would deliberately do somethign to create this catastrophe?

Q Do you know of any affirmative act done by any union member that related to this accident?

A I know of nothing.

Q Do you know of anything the union, or its representatives and members, failed to do that, in your opinion, caused or contributed to the cause of this fire and the ultimate deaths? The first time I asked you if you

knew anything that they had done; now do you know anything they failed to do?

A No, sir, I can't recall of any.

• • • •

[92] Q In the union contract it appears that, "Two men shall be designated by the union to accompany the safety engineer on tours of the mine. Once each month, one of these two men, together with the safety engineer, shall make a tour of a section of the mine." Was this done?

A Yes, sir.

• • • •

ORAL DEPOSITION OF LAWRENCE L. MARSHALL TAKEN OCTOBER 17, 1973

• • • •

[4] Q Your business or occupation?

A Staff Representative, United Steelworkers of America.

• • • •

[25] Q Other than for whatever inspections that the members of this committee made with reference to the safety conditions in the Sunshine Mine, up until the date of the fire, did the International do anything else with reference to the safety conditions in that mine that you know of?

A I don't understand.

Q Did it conduct any independent investigation or surveys or bring in any outside or International employees to make any investigations concerning the safety conditions in [26] that mine up until the date of the fire?

A Not to my knowledge.

MR. COHEN: I'm going to object in the sense that there is no establishment that there was any right of any party other than the existing safety committee consisting of members of the union to participate in such activity.

Q Insofar as you know, the only representatives of the union, International or local, who participated in any

of the safety considerations at the Sunshine Mine, would be the members of the committee?

A Yes.

• • • •

ORAL DEPOSITION OF LAVERN ALBERT MELTON TAKEN OCTOBER 17, 1973

• • • •

[3] Q Your business or occupation?

[4] A Miner.

Q What is your connection with mining?

A Shaft repairman, I work for Sunshine Mining Company.

Q How long have you worked as the shaft repairman?

A Four years.

Q For Sunshine?

A Four years.

• • • •

[9] Q And at some point you became not only a member of the union, but also an officer of the union?

A Yes, I did.

Q When was that?

A I don't know, when Art Udstad retired, I guess prior to that, I guess when Dick Crane passed away, I became Financial Secretary.

Q About what year?

A Oh, let's see, '69, maybe.

Q Then you continued as Financial Secretary up until about when?

A Until 1970.

Q At which time you were elected President?

A Right.

Q And you have been President ever since?

A Yes.

• • • •

[19] Q Now the contract provides that these—well, the men designated by the union are to accompany the

safety engineer on tours of the mine, and once each month, one of these men to go with the safety engineer shall make a tour of a section of the mine, and results of this tour shall be considered at the following union-management safety committee meeting. Was that [20] provision of the contract carried out?

A Yes.

Q Was there an union-management safety committee meeting once each month?

A Yes.

Q There are minutes of each of those meetings?

A Yes.

Q It also provides that an union member may accompany the State Mine Inspector, or his deputy, on any inspection of the property. Was that done?

A Yes.

• • • •

[25] Q What standards, if any, did you follow or utilize in determining whether a man should be appointed to the safety committee or continued on the safety committee?

A The standard I looked for with a person was that if I felt he would be a conscientious person that would do the job that we had hoped they could do, who was familiar with the mine; I chose Gordon Whatcott, he was a gypo miner, and he had shown interest in the union; I chose Mr. Boehner because he was a day's pay miner, and he was interested in the employees.

Q You say you chose Mr. Bechner and Mr. Whatcott—

A Not for the fact they could read or write, but that they could do a job.

Q What job did you expect them to do?

A Take and represent the employees for bitches about [26] safety.

Q Just bitches about saefety, or also to make investigations to determine what conditions in the mine might be unsafe or dangerous?

A No, I did not expect them to do this, I did not have this ability, and I didn't expect them to have the ability. This is one of the reasons I did not care if they could read or write; they had practical knowledge, and that's the most important thing.

Q At any time up until the date of the fire, carrying out your work of your committee, did you retain or hire any independent safety consultants or experts of any kind to make safety investigations with you?

A What do you mean?

MR. COHEN: I'm going to object to that question on the ground that there is no foundation that the union would have any right to have any of those people under this agreement.

Q That may be, I'm asking if they did retain anybody to make any such investigation, it's a simple question.

A No.

MR. COHEN: If they can't be there, how can they make that investigation? If you want to, ask him whether or not we hired, retained anybody as a consultant to the local union, I have no objection.

Q Did you retain anybody as a safety consultant for the [27] local union to investigate or make any determination of any kind or nature with reference to the safety conditions at the Sunshine Mine before the fire occurred?

A No, I never.

• • • •

[29] Q I'll rephrase the question, and try to make it a little clearer; were there any improvements, safety improvements, which you or your committee suggested to the Sunshine Mine that were not adopted or carried out by the Sunshine Mine?

A By myself or the safety committee, yes there were.

Q What was that?

A Well, the solitary employment situation; this has been a problem for quite some time.

[30] Q That has to do with requiring a man to work by himself and not in the company of another worker, is that correct?

A Yes.

Q What else, if anything?

A Secondary escapeways.

Q Did you feel—

A Your question was that the company did not comply with?

Q Yes, that would be the second category.

A They finally complied with the secondary escapeways.

Q After the fire?

A No, prior to the fire. Another recommendation that I made that I do not have a documented evidence of, was I asked for evacuation of the mine in case of fire, and which was brought out by a fire that happened, I don't know, just about a year prior to this fire, and the company did not think it was necessary.

• • • •

[32] Q Did you mention this also to the State inspector?

A Yes, I discussed this with Bill Spear.

Q Do you know whether or not he ever took any steps—

A I informed him that there was a fire, he did not know [33] it until that time that there was a fire.

Q Do you know if the stench system was working at the time of that fire that occurred?

A I know it was not working.

Q Do you know whether or not it was ever repaired, that it wasn't working up until the time of the disaster on May 2?

A I was aware it was not working through the efforts of the State inspector. He informed me that it wasn't hooked up, and he said the company promised

they would hook it up immediately, and they claim it was hooked up.

• • • •

[44] Q What expertise, if any, did you have in the field of underground mine safety procedure and conditions, up until the time of this fire?

A The expertise I had is what a general miner has; the school of hard knocks.

Q Other than that, you did not have any particular expertise, is that correct?

A No, if I did I wouldn't be underground.

Q Did you get the impression that until the time of the [45] fire, that the Sunshine Mining Company's management was more interested in production than they were in the safety of the workers in the mine?

A Yes.

MR. KADING: I'd like to have the record show that I have objected to the form of that question.

Q Would you set forth some of the various circumstances and factors which caused you to form that opinion?

A Well, when I made the complaint about not evacuating the mine, the one day of the fire, prior to the tragedy, the company said it would be silly to take and shut down production and pull all of the men out of the mine, and find out it was just a burning rag, and they could not afford to do this, and put them back to work.

Q That was about a year before the fire occurred?

A Something like that.

Q Does that ring a bell in your head, that perhaps the Sunshine Mine management was not all that interested in the safety of your union people, and perhaps you had better bring in some experts or anything of that nature to see what should be done to insure safety in that mine?

MR. KADING: I'll object to the form of the question.

MR. COHEN: I'll object to the question, and the question of what legal rights the union would have.

Q When you realized, one year before this disaster occur- [46] red, that management was more interested in production than it was in safety, what, if any, steps or things did you do thereafter to try to see that the mine was safe for your union members?

A I consulted the Federal inspectors and State inspectors.

Q Mr. Griner?

A I talked to Mr. Griner, I talked to Mr. Spear, I talked to—I can't think of the other man's name.

Q What did you talk to them specifically about?

A I consulted both of them about the secondary escapeways.

Q Did you tell them you felt they were unsafe?

A I didn't understand what it required, the secondary escapeway—

Q When did you tell Mr. Spear and Mr. Griner about this?

A Just prior to this letter I wrote on the secondary escapeways.

Q Do you know whether or not they ever did anything about it?

A No, I don't; they did inspect it.

Q Did they ever report back to you as to what they found?

A They reported to me that the law was so loose that the company technically was in compliance.

Q Did they tell you that the secondary escape routes [47] would not be adequate in the event of a fire?

A They said they would be adequate under the language that they had to work with.

Q Did they tell you whether or not they'd be adequate in practice as distinguished from the language of the regulations?

A They did not specifically say this.

Q Did you ask?

A Yes, I believe I did.

Q What did they say?

A All they could do was work within the law.

• • • •

[61] Q All right, on these monthly inspections, trips that would be made by the safety committee, some of which you were not on, did the Sunshine Mine people place any restrictions on what you could inspect or what you could do, to try to see, as to whether or not there were unsafe procedures or conditions?

A They did not place any restrictions, but they had the inspection route laid out and by the time you had completed the areas they had lined out, there was no more time to inspect anything else, but I would assume—I can't assume, so okay.

IN THE DISTRICT COURT
OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF SHOSHONE

[Title Omitted]

FIRST INTERROGATORIES TO DEFENDANT, UNITED STEELWORKERS OF AMERICA

INTERROGATORY NO. 11: Please state the name, address, and job title or capacity of the members of the Local Union #5089 Safety Committee of the Sunshine Mining Company at Kellogg, Idaho.

ANSWER: Gordon Whatcott (deceased)
844 South Division
Kellogg, Idaho 83837

Einar Pedersen
Star Route
Kellogg, Idaho 83837

Don Beehner, Chairman (deceased)
Box 1262
Wallace, Idaho 83873

Kenneth Chambers (address unknown)

INTERROGATORY NO. 12: Please state the names of those members of the Safety Committee who are members of the United Steelworkers of America.

ANSWER: Gordon Whatcott (deceased)
Einar Pedersen
Don Beehner (deceased)
Kenneth Chambers

INTERROGATORY NO. 13: Please state specifically, the purpose of the Safety Committee referred to in the preceding two Interrogatories.

ANSWER: See Article IX, Section 3 of the collective bargaining agreement.

INTERROGATORY NO. 14: Please list all duties and responsibilities of the said Safety Committee.

ANSWER: The duties and responsibilities of the Safety Committee are set forth in detail in Article IX, Section 3 of the collective bargaining agreement. They are designed to assist the company in carrying out its "responsibility to provide for the safety and health of its employees during the hours of their employment. . . ." See also Article IX, Section 1 and Article XVI, Section 3 of the collective bargaining agreement.

• • • •

INTERROGATORY NO. 22: Please state whether or not it was a duty or responsibility of said Staff Representative to participate in any of the State or Federal safety inspections, at the Sunshine Mine at Kellogg, Idaho.

ANSWER: No. Under Article IX, Section 4 of the collective bargaining agreement, non-employees, such as a Staff Representative had no right to participate in underground inspections by the Government.

• • • •

INTERROGATORY NO. 28: Please state whether or not the Staff Representative of United Steelworkers of America at Kellogg, Idaho, made any personal tours or inspections of the Sunshine Mine at Kellogg, Idaho, and if so, the dates of such tours or inspections, and the reasons for the same.

ANSWER: No. See also answer to Interrogatory No. 22. Staff Representative has no right to engage in such activity.

• • • •

INTERROGATORY NO. 39: Please state whether or not the United Steelworkers of America employed the services of any expert dealing with mine safety, in an advisory or other capacity. If your answer is in the affirmative, please state, for both prior to May 2, 1972, and subsequent to May 2, 1972, the following:

(a) The name, address and telephone number of such experts;

(b) The dates of said employment;

(c) The subject matter of such expert's expertise.

ANSWER: No.

INTERROGATORY NO. 40: Please state whether or not the United Steelworkers of America conducted any independent investigations or surveys, or brought in any outside employee to make any investigations concerning the safety conditions in the Sunshine Mine at Kellogg, Idaho, and if so, please state:

(a) The name, address, job capacity or title of such person or persons.

(b) The dates of said investigations or surveys.

(c) The reasons for such investigations or surveys.

(d) Whether or not any written reports were made of such investigations, and if so, the name and address of the person who has present possession of said reports.

ANSWER: No. The United Steelworkers of America had no authority to bring in outside persons to investi-

gate and inspect the properties owned by the Sunshine Mining Company.

• • • •

INTERROGATORY NO. 44: Please state whether or not members of the Safety Committee of the Sunshine Mine at Kellogg, Idaho, were:

(a) required, or allowed, to accompany State or Federal Mine Inspectors in their regular inspections of the Sunshine Mine, and the reasons therefore;

(b) included in any and all regular inspections, or inspections made on an irregular basis, because they demanded to be included.

ANSWER:

(a) One Union member of the Safety Committee was allowed to accompany state mine inspectors in their regular inspection of the Sunshine Mine under the provisions of the collective bargaining agreement (Article IX, Section 4). The Company refused to permit Union members of the Safety Committee to accompany federal mine inspectors during the latter's entire inspection tours.

(b) No. The Safety Committee had no contractual right to be included in any inspections conducted by the Company other than the joint tour provided for in Article IX, Section 5 of the collective bargaining agreement.

INTERROGATORY NO. 45: With regard to safety recommendations related to safety conditions made by the Safety Committee, please state what action is taken by the United Steelworkers of America if such recommendations are not carried out.

ANSWER: See Article IX, Sections 3 and 6 and Article XVI, Section 3 of the collective bargaining agreement.

• • • •

IN THE DISTRICT COURT
OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF SHOSHONE

[Title Omitted]

AFFIDAVIT OF EINAR PEDERSEN

STATE OF IDAHO)
) ss.
COUNTY OF SHOSHONE)

EINAR PEDERSEN, being first duly sworn upon oath, deposes and says:

1. I was employed by the Sunshine Mining Company at its silver mine in Kellogg, Idaho, from 1949 until my retirement in 1973. I was classified as a timber repairman.

2. Commencing in 1954 and continuing to this date, the United Steelworkers of America, AFL-CIO, and its chartered Local 5089 (jointly referred to as the "Union"), was the exclusive representative of a bargaining unit consisting of all the Company's production and maintenance employees, including myself. I became a member of the Steelworkers in approximately 1960.

3. During this same period of time, Sunshine Mining Company and the Union entered into a series of successive collective bargaining agreements covering the terms and conditions of employment for the production and maintenance employees.

4. Article XVI, section 3, of the March 11, 1970 Agreement (which was in effect when the underground fire occurred in May, 1972) provided that:

> "3. The management of the Company's property being vested exclusively in the Company, the Company has, subject to the provisions of this Agreement, the sole discretion of the working forces, including among others the right to hire, discipline and discharge for cause, to assign work, to determine qualifications, to effect job changes, to determine the equipment to be used and to expand, curtail, suspend, or resume operations."

That same basic provision, to the best of my knowledge, was contained in each of the contracts negotiated between Sunshine and the Union.

5. Article IX of the contract sets forth the commitments which the Company agreed to undertake with reference to its responsibility to provide for the safety and health of its employees. Article IX also contains a description of the limited role in the safety and health area which Local 5089 was authorized to play on behalf of the employees in the bargaining unit.

6. I was elected a member of the Local Union Safety Committee in 1961. Thereafter and continuing until 1973, I served in that capacity upon being appointed by the respective Local Union Presidents.

7. Throughout the entire course of my tenure as a Safety Committeeman, the services I performed on behalf of bargaining unit employees were a direct result of Article IX of the contract. Further, the Safety Committee acted only in an advisory capacity in accordance with the express provisions of Article IX. (A copy of that Article is attached hereto as Exhibit A to the Pedersen Affidavit.)

Further your affiant sayeth not.

DATED this 12th day of August, 1975.

/s/ Einar Pedersen
EINAR PEDERSEN

[Jurat Omitted]

IN THE DISTRICT COURT
OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR SHOSHONE COUNTY

[Title Omitted]

AFFIDAVIT OF LAWRENCE L. MARSHALL

STATE OF IDAHO)
) ss.
COUNTY OF SHOSHONE)

I, LAWRENCE L. MARSHALL, being first duly sworn on oath, depose and say that;

1. I am a staff representative of the United Steelworkers of America (AFL-CIO) and that I have held such position since March 11, 1968.

2. The United Steelworkers of America, AFL-CIO, and its local Union 5089 were jointly certified as the exclusive bargaining representative of the production and maintenance employees of the Sunshine Mining Company in 7-29-54.

3. I was assigned to service local Union 5089 at this Sunshine Mining Company from March 11, 1968 to October 1, 1973.

4. The duties of a staff representative includes negotiating collective bargaining agreements on behalf of local unions chartered by the United Steelworkers of America, AFL-CIO.

5. I was chief spokesman for the union negotiating committee which negotiated the March 11, 1970, collec-

tive bargaining agreements between the Sunshine Mining Company and the United Steelworkers of America, AFL-CIO (a copy of which is attached hereto as Exhibit "A"); that said contract was in effect on May 2, 1972.

6. Article 9 of said collective bargaining agreement provides for the establishment of a safety committee at the Sunshine Mining Company.

7. Article 9 of the collective bargaining agreement sets forth the functions of the safety committee at the Sunshine Mining Company.

Further your affiant sayeth not.

DATED this 12th day of August, 1975.

/s/ Lawrence L. Marshall
LAWRENCE L. MARSHALL

[Jurat Omitted]

IN THE DISTRICT COURT
OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF SHOSHONE

[Title Omitted]

AMENDED COMPLAINT, DEMAND FOR JURY TRIAL AND MOTION FOR MAINTENANCE OF CLASS ACTION

COME NOW the above named Plaintiffs and additional Plaintiffs and as and for their causes of action against the above named Defendant, complain and allege as follows:

COUNT ONE

I.

The individually named Plaintiffs are heirs at law of Glen Raymond Rossiter, Don B. Wood, Wayne Lyle Johnson, and John R. Rawson, miners employed at the Sunshine Mine in Shoshone County, Idaho, who died on May 2, 1972, as a direct and proximate result of the negligence of the Defendant.

II.

Laura Dunbar has been appointed in Civil Case No. 17942 as Guardian ad Litem for Rickina Rossiter and Glen Raymond Rossiter, Jr., her minor children, heirs at law of Glen Raymond Rossiter. Rickina Rossiter and Glen Raymond Rossiter, Jr., are the heirs at law of Glen Raymond Rossiter, deceased. Also Laura Dunbar, for and on behalf of all persons similarly situated and designated herein as John Does and Jane Does #1 through #400.

III.

Mary Wood has been named Guardian ad Litem for Leslie D. Wood, her minor child, heir at law of Don B. Wood, in Civil Case No. 18222. Leslie D. Wood is the heir at law of Don B. Wood.

IV.

Berniece Johnson is the widow of Wayne Lyle Johnson, deceased. She has been appointed Guardian ad Litem for Michael Wayne Johnson, Ruth Ellen Johnson, and John Russell Johnson, minor children of her and of Wayne Lyle Johnson in Civil Case No. 17741. Berniece Johnson, Michael Wayne Johnson, Ruth Ellen Johnson, John Russell Johnson, Christine Johnson, and Donald Johnson are the heirs at law of Wayne Lyle Johnson, deceased.

V.

Tharon Rawson is the widow of John R. Rawson, deceased. She has been named as Guardian ad Litem for Seth Rawson and Cindy Rawson, heirs at law of John R. Rawson, deceased, in Civil Case No. 17694. Tharon Rawson, Seth Rawson and Cindy Rawson are the heirs at law of John R. Rawson, deceased.

VI.

That the legal representatives of the estates of the above named plaintiffs' decedents, individually and on behalf of all decedent miners' estates similarly situated, are designated herein as John Doe and Jane Does #401 through #491, to be named at a later date when all of those who are similarly situated have been identified.

VII.

Ninety-one miners, employees of the Sunshine Mine in Shoshone County, Idaho, were killed on May 2, 1972, in a fire at the said mine. There are numerous heirs at law

of those deceased miners, who are entitled to recovery against the Defendant by reason of the deaths of the said miners, which deaths were the direct and proximate result of the negligence of the Defendant.

VIII.

It is appropriate that the individually named Plaintiffs be permitted to sue as representative parties on behalf of all of the heirs at law of miners killed in the Sunshine Mine fire of May 2, 1972. It is appropriate that a class action be maintained for the following reasons:

A. The class consisting of the heirs at law of the deceased miners is so numerous that the joinder of all members of the class is impracticable;

B. There are questions of law and fact common to the class of claimants;

C. The claims of the representative parties are typical of the claims of the class of claimants sought to be represented; and

D. The individual Plaintiffs will fairly and adequately protect the interests of the class.

IX.

Class action should be permitted to be maintained in this matter in that:

A. The continued prosecution of the separate actions brought by the individual Plaintiffs would create a risk of adjudications with respect to the individual members of the class of claimants which would as a practical matter be dispositive of the interests of the other members of the class of parties to the adjudications; and

B. There are questions of law and fact common to the members of the class which predominate over

any questions affecting only individual members of a class; and

C. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

X.

It is unlikely, given the circumstances of representation of certain of the heirs at law of the deceased miners, other than the individually named Plaintiffs herein, in previous litigation in the courts of the United States of America, that the heirs at law of the deceased miners, other than the individually named Plaintiffs, will receive relief against the Defendant unless the individually named Plaintiffs are permitted to pursue this action on behalf of themselves and representative of other heirs at law of the deceased miners similarly situated.

XI.

The individually named Plaintiffs have filed actions in this Court which actions are in nowise intended to be affected by the filing of this Complaint and Motion, but it will be appropriate, if the Motion for creation and maintenance of a class action as here incorporated is granted, to consolidate those actions with this action for trial.

XII.

The Defendant is a labor union, an unincorporated association, and is and was, on May 2, 1972, doing business in the State of Idaho.

XIII.

The Defendant owed the Plaintiffs' decedents the duty of due care under Idaho law.

XIV.

The Defendant undertook to act as accident prevention representative and enforcer of an agreement negotiated

between the said Defendant on behalf of the deceased miners and so acted negligently in at least the following respects:

A. It misrepresented its safety concern and expertise to the rank and file.

B. It failed to develop adequate safety programs for its union membership.

C. It undertook to provide representatives who inspected and pretended to enforce the contractual accident prevention clauses, and did so negligently, to-wit:

(1) It failed to require mine evacuation on first evidence of smoke underground;

(2) It failed to require fire drills;

(3) It failed to require personal protective equipment;

(4) It failed to require adequate protection against spontaneous combustion of discarded timbers underground;

(5) It failed to require adequate emergency egress from the mine.

XV.

Each of the aforesaid acts of negligence was jointly and severally a proximate cause of Plaintiffs' decedents' untimely deaths.

XVI.

Prior to their deaths, the miners now deceased were in good health and capable of earning substantial sums, and did provide support, services, advice, nurture, companionship and consortium to their families.

XVII.

The individually named Plaintiffs and all heirs at law of the deceased miners similarly situated have been

deprived of the support, services, advice, nurture, companionship and consortium of the deceased miners.

XVIII.

That prior to their deaths, the miners now deceased were in good health and that because of the nature of the fire and its location, they were caused to unduly suffer conscious painful deaths by suffocation, all to their general damages and the general damages to their estates in a sum to be proven at time of trial.

XIX.

Plaintiffs demand a trial by Jury.

COUNT TWO

I.

The additional Plaintiffs, KENNETH A. RILEY and MYRLE RILEY, husband and wife, are residents of Shoshone County, Idaho. That KENNETH RILEY was a miner employed at the Sunshine Mine in Shoshone County, Idaho, and working in the said mine on May 2, 1972.

II.

That the additional plaintiffs, injured survivors, individually and on behalf of all injured survivors similarly situated, are designated herein as John Doe and Jane Does #500 through #550, to be named at a later date when all of those who are similarly situated have been identified.

III.

That as a result of the fire in the said mine on May 2, 1972, ninety-one (91) miners, employees of the Sunshine Mine, were killed, and in addition to the deaths, KENNETH RILEY was severely and permanently injured as a direct and proximate result of the negligence of the Defendant.

IV.

That as a direct and proximate result of the Defendant's negligence, KENNETH RILEY has incurred substantial medical expenses in the past and will continue to incur medical expenses in the future. In addition to the above, KENNETH RILEY, has suffered a loss of income in the past and will continue to suffer a loss of income in the future. Additionally, KENNETH RILEY, has been generally damaged by pain and suffering, loss of consortium and loss of enjoyment of life. All of the said damages in the sums which will be proven at time of trial.

V.

That as a direct and proximate result of the Defendant's negligence, MYRLE RILEY, has incurred substantial medical expenses relating to her husband's injuries and need for constant care. In addition, she has suffered a loss of her community interest in the past and future earnings of her husband. Additionally, she has been generally damaged for her pain, suffering and distress as a result of her husband's injuries manifest in his diminished ability to cope and adjust to his injuries; in her loss of consortium, companionship, society and enjoyment of life. All of the above specified damages in the sums which will be proven at time of trial.

VI.

In addition to the injuries sustained by KENNETH RILEY as a survivor, other persons who survived and were injured are similarly situated and have causes of action against the Defendant herein. (John Does and Jane Does #500 through #550).

VII.

It is appropriate that these individuals named as additional plaintiffs be permitted to sue as representative

parties on behalf of all other of the survivors who were injured in the Sunshine Mine fire of May 2, 1972. It is appropriate that a class action be maintained for the following reasons:

A. The class consisting of injured survivors is so numerous that the joinder of all members of the class is impracticable;

B. There are questions of law and fact common to the class of claimants;

C. The claims of the representative injured parties are typical of the claims of the class of claimants sought to be represented; and

D. The individual Plaintiffs will fairly and adequately protect the interests of the class.

VIII.

Class action should be permitted to be maintained in this matter in that:

A. The continued prosecution of the separate actions brought by the additional Plaintiffs would create a risk of adjudications with respect to the individual members of the class of claimants which would as a practical matter be dispositive of the interests of the other members of the class of parties to the adjudications; and

B. There are questions of law and fact common to the members of the class which predominate over any questions affecting only individual members of a class; and

C. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

IX.

It is unlikely, given the circumstances of representation of injured survivors, other than the individually named additional plaintiffs herein, in previous litigation in the courts of the United States of America, that the injured survivors, other than the individually named additional plaintiffs, will receive relief against the Defendant unless the individually named additional plaintiffs are permitted to pursue this action on behalf of themselves and representative of other injured survivors similarly situated.

X.

The Defendant is a labor union, an unincorporated association, and is and was, on May 2, 1972, doing business in the State of Idaho.

XI.

The Defendant owed these additional plaintiffs the duty of due care under Idaho law.

XII.

The Defendant undertook to act as accident prevention representative and enforcer of an agreement negotiated between the said Defendant on behalf of the deceased miners and so acted negligently in at least the following respects:

A. It misrepresented its safety concern and expertise to the rank and file.

B. It failed to develop adequate safety programs for its union membership.

C. It undertook to provide representatives who inspected and pretended to enforce the contractual accident prevention clauses, and did so negligently, to-wit:

(1) It failed to require mine evacuation on first evidence of smoke underground;

(2) It failed to require fire drills;

(3) It failed to require personal protective equipment;

(4) It failed to require adequate protection against spontaneous combustion of discarded timbers underground;

(5) It failed to require adequate emergency egress from the mine.

XIII.

Each of the aforesaid acts of negligence was jointly and severally a proximate cause of these additional plaintiffs' injuries and damages.

XIV.

That prior to his injuries, KENNETH RILEY, was in good health and capable of earning substantial sums, and did provide support, services, advice, nurture, companionship and consortium to his family.

XV.

That all injured survivors similarly situated did provide support, services, advice, nurture, companionship and consortium to their families.

XVI.

Additional Plaintiffs demand a trial by jury.

COUNT THREE

I.

Plaintiffs hereby reiterate paragraphs I through XIX of their Count One, and incorporate the same herein by reference thereto as though set forth in full verbatim.

II.

That the acts of the Defendant as specifically set forth in paragraph XIV of Count One were willful, wanton, reckless and grossly negligent.

III.

That the hereinabove set forth acts on the part of the Defendant were such that they support the award of punitive damages to all individually named plaintiffs and to those included within the class.

IV.

That the acts hereinabove set forth acts on the part of the Defendant are such as to support the award of attorney's fees incurred on behalf of all individually named plaintiffs and members of the class in the prosecution of these actions.

COUNT FOUR

I.

Additional Plaintiffs hereby reiterate paragraphs I through XVI of their Count Two, and incorporate the same herein by reference thereto as though set forth in full verbatim.

II.

That the acts of the Defendant as specifically set forth in paragraph XII of Count Two, were willful, wanton, reckless and grossly negligent.

III.

That the hereinabove set forth acts on the part of the Defendant were such that they support the award of punitive damages to all additional plaintiffs and to those included within the class.

IV.

That the acts hereinabove set forth acts on the part of the Defendant are such as to support the award of attorney's fees incurred on behalf of all additional plaintiffs and members of the class in the prosecution of these actions.

COUNT FIVE

I.

Plaintiffs hereby reiterate paragraphs I through XII of their Count One, and incorporate the same herein by reference thereto as though set forth in full verbatim.

II.

That the Defendant made the following representations to its members, the rank and file of said Union:

A. That it was a competent organization for protecting the welfare, safety and interest of its members, and had a concern for said welfare, safety and interest of its members.

B. That it has a reliable degree of expertise in underground mining.

C. That it would develop adequate programs of safety through its union representatives for the benefit of its members, the rank and file of said union.

D. That it would provide competent union representatives to participate in the inspections of the mine for safety and accident prevention.

E. That it would enforce the provisions of the union contract with the Sunshine Mine as the same regarded safety and accident prevention.

III.

That contrary to its representations, the Defendant specifically failed to do the following:

(1) It failed to require mine evacuation on first evidence of smoke undergrounds;

(2) It failed to require fire drills;

(3) It failed to require personal protective equipment;

(4) It failed to require adequate protection against spontaneous combustion of discarded timbers underground;

(5) It failed to require adequate emergency egress from the mine.

(6) It failed to initiate and instigate the formation of any safety programs.

IV.

That all representations made by the Defendant as enumerated in paragraph II above were false and were material to the actions of the plaintiffs' decedents and all of the rank and file members of the defendant, who relied upon the same.

V.

That the Defendant intended that its representations should be acted upon by the plaintiffs' decedents and were so acted upon by the plaintiffs' decedents in a reasonably contemplated manner; that the plaintiffs' decedents were ignorant of the falsity of defendant's representations; that the plaintiffs' decedents reasonably relied upon the alleged truthfulness of said representations; and that the plaintiffs' decedents had a right to rely upon the said representations.

VI.

That each of the aforesaid misrepresentations was jointly and severally a proximate cause of plaintiffs' decedents' untimely deaths.

VII.

Prior to their deaths, the miners now deceased were in good health and capable of earning substantial sums, and did provide support, services, advice, nurture, companionship and consortium to their families.

VIII.

The individually named Plaintiffs and all heirs at law of the deceased miners similarly situated have been deprived of the support, services, advice, nurture, companionship and consortium of the deceased miners.

IX.

That prior to their deaths, the miners now deceased were in good health and that because of the nature of the fire and its location, they were caused to unduly suffer conscious painful deaths by suffocation, all to their general damages and the general damages to their estates in a sum to be proven at time of trial.

X.

That the aforementioned acts on the part of the Defendant are alleged constructive fraud against these individual plaintiffs and all others similarly situated.

COUNT SIX

I.

Additional Plaintiffs hereby reiterate paragraphs I through X of their Count Two, and incorporate the same herein by reference thereto as though set forth in full verbatim.

II.

That the Defendant made the following representations to its members, the rank and file of said Union:

A. That it was a competent organization for protecting the welfare, safety and interest of its members, and had a concern for said welfare, safety and interest of its members.

B. That it has a reliable degree of expertise in the safety and welfare field as the same relates to underground mining.

C. That it would develop adequate programs of safety through its union representatives for the benefit of its members, the rank and file of said union.

D. That it would provide competent union representatives to participate in the inspections of the mine for safety and accident prevention.

E. That it would enforce the provisions of the union contract with the Sunshine Mine as the same regarded safety and accident prevention.

III.

That contrary to its representations, the Defendant specifically failed to do the following:

(1) It failed to require mine evacuation on first evidence of smoke underground;

(2) It failed to require fire drills;

(3) It failed to require personal protective equipment;

(4) It failed to require adequate protection against spontaneous combustion of discarded timbers underground;

(5) It failed to require adequate emergency egress from the mine;

(6) It failed to initiate and instigate the formation of any safety programs.

IV.

That all representations made by the Defendant as enumerated in paragraph II above were false and were material to the actions of the injured survivors and all of the rank and file members of the defendant, who relied upon the same.

V.

That the Defendant intended that its representations should be acted upon by the injured survivors and were so acted upon by the injured survivors in a reasonably contemplated manner; that the injured survivors were ignorant of the falsity of defendant's representations; that the injured survivors reasonably relied upon the alleged truthfulness of said representations; and that the injured survivors had a right to rely upon the said representations.

VI.

That each of the aforesaid misrepresentations was jointly and severally a proximate cause of the injuries to the survivors.

VII.

Prior to their injuries, the survivors and all other injured survivors similarly situated were in good health and capable of earning substantial sums, and did provide support, services, advice, nurture, companionship and consortium to their families.

VIII.

That the aforementioned acts on the part of the Defendant are alleged constructive fraud against these additional plaintiffs and all others similarly situated.

COUNT SEVEN

I.

Plaintiffs hereby reiterate paragraphs I through XII of their Count One, and incorporate the same herein by reference thereto as though set forth in full verbatim.

II.

That the Defendant made the following representations to its members, the rank and file of said Union:

A. That it was a competent organization for protecting the welfare, safety and interest of its members, and had a concern for said welfare, safety and interest of its members.

B. That it has a reliable degree of expertise in the safety and welfare field as the same relates to underground mining.

C. That it would develop adequate programs of safety through its union representatives for the benefit of its members, the rank and file of said union.

D. That it would provide competent union representatives to participate in the inspections of the mine for safety and accident prevention.

E. That it would enforce the provisions of the union contract with the Sunshine Mine as the same regarded safety and accident prevention.

III.

That contrary to its representations, the Defendant specifically failed to do the following:

(1) It failed to require mine evacuation on first evidence of smoke underground;

(2) It failed to require fire drills;

(3) It failed to require personal protection equipment;

(4) It failed to require adequate protection against spontaneous combustion of discarded timbers underground;

(5) It failed to require adequate emergency egress from the mine;

(6) It failed to initiate and instigate the formation of any safety programs.

IV.

That all representations made by the Defendant as enumerated in paragraph II above were false and were material to the actions of the plaintiffs' decedents and all of the rank and file members of the defendant, who relied upon the same.

V.

That the Defendant knew that the aforementioned representations were false, or were recklessly indifferent as to whether or not said representations were true and would be acted upon.

VI.

That the Defendant intended that its representations should be acted upon by the plaintiffs' decedents and were so acted upon by the plaintiffs' decedents in a reasonably contemplated manner; that the plaintiffs' decedents were ignorant of the falsity of defendant's representations; that the plaintiffs' decedents reasonably relied upon the alleged truthfulness of said representations; and that the plaintiffs' decedents had a right to rely upon the said representations.

VII.

That said representations were made willfully, maliciously and intentionally and with an intent to deceive the plaintiffs' decedents, and thus constitute actual fraud, thereby supporting an award of punitive damages to all individually named plaintiffs and to those included within the class.

VIII.

That the acts of the Defendant hereinabove set forth are such as to support an award of attorneys' fees in-

curred on behalf of all individually named plaintiffs and members of the class.

COUNT EIGHT

I.

Additional Plaintiffs hereby reiterate paragraphs I through X of their Count Two, and incorporate the same herein by reference thereto as though set forth in full verbatim.

II.

That the Defendant made the following representations to its members, the rank and file of said Union:

A. That it was a competent organization for protecting the welfare, safety and interest of its members, and had a concern for said welfare, safety and interest of its members.

B. That it has a reliable degree of expertise in the safety and welfare field as the same relates to underground mining.

C. That it would develop adequate programs of safety through its union representatives for the benefit of its members, the rank and file of said union.

D. That it would provide competent union representatives to participate in the inspections of the mine for safety and accident prevention.

E. That it would enforce the provisions of the union contract with the Sunshine Mine as the same regarded safety and accident prevention.

III.

That contrary to its representations, the Defendant specifically failed to do the following:

(1) It failed to require mine evacuation on first evidence of smoke underground;

(2) It failed to require fire drills;

(3) It failed to require personal protective equipment;

(4) It failed to require adequate protection against spontaneous combustion of discarded timbers underground;

(5) It failed to require adequate emergency egress from the mine.

(6) It failed to initiate and instigate the formation of any safety programs.

IV.

That all representations made by the Defendant as enumerated in paragraph II above were false and were material to the actions of the plaintiffs' decedents and all of the rank and file members of the defendant, who relied upon the same.

V.

That the Defendant knew that the aforementioned representations were false, or were recklessly indifferent as to whether or not said representations were true and would be acted upon.

VI.

That the Defendant intended that its representations should be acted upon by the injured survivors and were so acted upon by the injured survivors in a reasonably contemplated manner; that the injured survivors were ignorant of the falsity of defendant's representations; that the injured survivors reasonably relied upon the alleged truthfulness of said representations; and that the injured survivors had a right to rely upon the said representations.

VII.

That said representations were made willfully, maliciously and intentionally and with an intent to deceive the injured survivors, and thus constitute actual fraud, thereby supporting an award of punitive damages to all additional plaintiffs and to those included within the class.

VIII.

That the acts of the Defendant hereinabove set forth are such as to support an award of attorneys' fees incurred on behalf of all additional plaintiffs and members of the class.

WHEREFORE, Plaintiffs, Additional Plaintiffs and movants pray:

1. That Plaintiffs be permitted to sue as representative parties on behalf of the class consisting of the heirs at law of the deceased miners killed in the May 2, 1972, fire at the Sunshine Mine in Shoshone County, Idaho, consistent with the provisions of Rule 23, Idaho Rules of Civil Procedure; that additional Plaintiffs be permitted to sue as representative parties on behalf of the class consisting of the other injured survivors so injured in the May 2, 1972, fire at the Sunshine Mine in Shoshone County, Idaho, consistent with the provisions of Rule 23, Idaho Rules of Civil Procedure;

2. That an Order so enter;

3. That each of the heirs at law of the deceased miners, including the members of the class sought to be represented, be awarded damages against the Defendant in such sums as proof may determine;

4. That each of the injured survivors, including the members of the class sought to be represented, be awarded damages against the Defendant in such sums as proof may determine;

5. That the Plaintiffs and all other parties similarly situated, and additional Plaintiffs and all other parties similarly situated, be awarded reasonable attorneys' fees in the prosecution of this action in such sums as the Court may deem proper;

6. That the Plaintiffs and all other parties similarly situated, and additional Plaintiffs and all other parties similarly situated, be awarded their costs incurred in this action and such other and further relief as the Court may deem proper.

7. That all Counts contained herein have jury consideration.

Dated this 11th day of September, 1980.

BRUCE O. ROBINSON, P. A.
BRADLY S. FORD, P.A.

WEBB, BURTON, CARLSON, PEDERSEN & PAINE

THOMAS A. MITCHELL

MAY, MAY, SUDWEEKS & SHINDURLING

MATTHEWS, LEE & WILSON

RAPAICH & KNUTSON

RICHTER, WIMBERLEY & ERICSON

CARTWRIGHT, SUCHERMAN, SLOBODIN & FOWLER

By /s/ Bruce O. Robinson
BRUCE O. ROBINSON
Counsel for Plaintiffs and Additional Plaintiffs

IN THE DISTRICT COURT
OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF SHOSHONE

[Title Omitted]

DEFENDANT'S ANSWER TO AMENDED COMPLAINT

Defendant United Steelworkers of America (hereinafter "the Union"), for its Answer to plaintiffs' amended complaint, alleges as follows:

FIRST DEFENSE

I.

With respect to the allegations contained in Count One of the amended complaint:

A. The Union is without sufficient knowledge or information to admit or deny the allegations contained in paragraphs II, III, IV, V, VI and XVI.

B. As a result of prior rulings of the Court, no response is required to the allegations contained in paragraphs VIII, IX, X and XI. To the extent that a response is deemed to be required, those allegations are denied.

C. The Union denies the allegations contained in paragraphs XIII, XIV, XV and XVII.

D. With respect to the allegations contained in paragraph I, the Union is without sufficient knowledge or information to admit or deny said allegations, except that the Union denies that Glen Raymond Rossiter, Don B. Wood, Wayne Lyle Johnson and John R. Rawson died as a direct and proximate result of the Union's negligence.

E. With respect to the allegations contained in paragraph VII, the Union denies the allegations contained in the second sentence thereof. The Union is without sufficient knowledge or information to admit or deny the allegations contained in the first sentence thereof, except that the Union admits there was a fire at the Sunshine Mine in Shoshone County, Idaho on May 2, 1972.

F. With respect to the allegations contained in paragraph XII, the Union admits that it is a labor union and an unincorporated association, but denies the remaining allegations in said paragraph.

G. With respect to the allegations contained in paragraph XVIII, the Union denies that it caused or is responsible for any general damages to any miners now deceased, or to their estates. The Union is without sufficient knowledge or information to admit or deny the remaining allegations in said paragraph.

H. With respect to paragraph XIX, the Union denies that plaintiffs are entitled to a trial by jury.

II.

With respect to the allegations contained in Count Three of the amended complaint:

A. With respect to paragraph I, which reiterates paragraphs I through XIX of Count One, the Union's response is as set forth in Part I of this First Defense.

B. The Union denies the allegations contained in paragraphs II, III and IV.

III.

With respect to the allegations contained in Count Five of the amended complaint:

A. With respect to paragraph I, which reiterates paragraphs I through XII of Count One, the Union's response is as set forth in Part I of this First Defense.

B. The Union is without sufficient knowledge or information to admit or deny the allegations contained in paragraph VII.

C. The Union denies the allegations contained in paragraphs II, III, IV, V, VI, VIII and X.

D. With respect to the allegations contained in paragraph IX, the Union denies that it caused or is responsible for any general damages to any miners now deceased, or to their estates. The Union is without sufficient knowledge or information to admit or deny the remaining allegations in said paragraph.

IV.

With respect to the allegations contained in Count Seven of the amended complaint:

A. With respect to paragraph I, which reiterates paragraphs I though XII of Count One, the Union's response is as set forth in Part I of this First Defense.

B. The Union denies the allegations contained in paragraphs II, III, IV, V, VI, VII and VIII.

V.

With respect to the portion of the amended complaint which begins with the word "WHEREFORE," and continuing to the end of the amended complaint, said portion of the amended complaint constitutes a prayer for relief to which no response is required. To the extent that a response is deemed to be required, the allegations contained in said portion of the amended complaint are denied.

SECOND DEFENSE

As a separate and distinct defense against plaintiffs' claims, the Union alleges that the Complaint fails to state a claim upon which relief may be granted.

THIRD DEFENSE

As a separate and distinct defense against plaintiffs' claims, the Union alleges that the Complaint is barred by Section 5-219, Idaho Code, the applicable statute of limitations, and/or by laches.

FOURTH DEFENSE

As a separate and distinct defense against plaintiffs' claims, the Union alleges that the Complaint is barred by the failure of the miners whose deaths are alleged in the amended complaint to invoke, exercise and/or exhaust procedures available to them under the collective bargaining contract between Sunshine and the Union.

FIFTH DEFENSE

As a separate and distinct defense against plaintiffs' claims, the Union alleges that to the extent that any duty was owed to the miners whose deaths are alleged in the amended complaint, it was the federal duty of fair representation and it was not breached in this cause.

SIXTH DEFENSE

As a separate and distinct defense against plaintiffs' claims, the Union alleges that to the extent any duty would otherwise have been owed at common law to the miners whose deaths are alleged in the amended complaint, such duty was and is preempted by federal law.

SEVENTH DEFENSE

As a separate and distinct defense against plaintiffs' claims, the Union alleges that even assuming the applicability of common law principles, the Complaint fails to state a claim for relief under Idaho law.

EIGHTH DEFENSE

As a separate and distinct defense against plaintiffs' claims, the Union alleges that even assuming the applica-

bility of common law principles, and even assuming that the Complaint states a claim under Idaho law, the Union owed no duty of care in this case to plaintiffs, nor to the miners whose deaths are alleged in the amended complaint.

NINTH DEFENSE

As a separate and distinct defense against plaintiffs' claims, the Union alleges that even assuming that it owed a duty of care at common law to plaintiffs or to the miners whose deaths are alleged in the amended complaint, and even assuming that the Complaint states a claim under Idaho law, the Union cannot be held liable here because

(a) the Union was not negligent,

(b) the negligence and/or assumption of the risk by the miners was the sole and/or supervening cause of any injury to plaintiffs or the miners,

(c) plaintiffs and the miners waived their rights to the fulfillment of any duty of care owed by the Union,

(d) the negligence of persons other than the Union was the sole and proximate cause of the injuries, if any, to plaintiffs and the miners, and

(e) the negligence of the miners was equal to or greater than any alleged negligence of the Union, and was a proximate cause of any injury to plaintiffs and the miners.

TENTH DEFENSE

As a separate and distinct defense, the Union alleges that the monetary recovery to which plaintiffs were entitled and/or which they already have received under the Idaho Workmen's Compensation Law or from any third party estops plaintiffs from any recovery here, and/or constitutes an offset against any recovery in this case.

ELEVENTH DEFENSE

As a separate and distinct defense, the Union alleges that plaintiffs' claims are barred by the doctrines of res judicata, collateral estoppel, and other applicable preclusion doctrines in that the issue of liability regarding this defendant was litigated in House v. Mine Safety Appliance, a case in which these plaintiffs were parties.

TWELFTH DEFENSE

As a separate defense, the Union states that under the Collective Bargaining Agreement in effect with the Sunshine Mining Company at the time of the underground fire on May 2, 1972 and in accordance with applicable State laws, the safety and health of the employees of Sunshine Mining Company, including the deceased, was the exclusive responsibility of the Company. Further, in any event, the Union did not undertake to act as a guarantor or insurer of any of Sunshine Mining Company's employees, including the deceased, against safety accidents or health hazards.

THIRTEENTH DEFENSE

That article IX of the Collective Bargaining Agreement provided:

> An employee who believes that he is being required to work under conditions which are unsafe beyond the normal hazards inherent in the operation in question, may request an immediate meeting with the shift boss, with or without consultation with his Assistant Grievance Committeeman. If, as a result of these actions, the employee still believes he is being required to work under conditions which are unsafe beyond the normal hazards inherent in the operation in question, a committee consisting of two (2) supervisory personnel and two (2) reliable employees, approved by the Union, shall inspect the op-

eration in question within twenty-four (24) hours and shall decide what steps, if any, are necessary to correct the hazard.

In the event the committee cannot agree, the employee involved may then file a grievance in Step 2 of the grievance procedure. It is understood and agreed that if a grievance is filed on an unsafe working condition, management and Union representatives shall give said grievance preferred handling, and shall expedite its movements through the grievance procedure.

The employee may on request, be relieved from the job and be assigned to other work at the discretion of the Company. If an employee exercises his rights under this section and the Company believes conditions are not beyond the normal hazards inherent in the operation in question, nothing contained in this section shall abridge the rights of the Company under other sections of this Agreement.

Neither shall the foregoing preclude the Company from assigning another employee to the job in question and it is further understood that no employee, other than communicating the facts, shall take any steps to prevent another from working on the job.

That by reason of said provision, each plaintiff's decedent had rights and an opportunity to notify the Union and/or the Company of any conditions which were unsafe beyond the normal hazards inherent in the operation in question. That each plaintiff's decedent failed to exercise his rights and opportunities, and such acts and ommissions were a proximate cause of the damages, of any, suffered by plaintiffs.

FOURTEENTH DEFENSE

As a separate defense, the Union alleges that after this action was commenced, each of the plaintiffs entered into

an agreement to compromise and settle each plaintiff's claim for wrongful death arising from the Sunshine Mine fire of May 2, 1972, against various defendants in the case of House v. Mine Safety Appliance Company in the United States District Court, for the District of Idaho. Said agreements released and discharged said defendants and was for substantial payments of money. Said agreements released and discharged said defendants which were joint tort-feasors. That said agreements and said payments constitute a discharge in full or a discharge pro tanto of this defendant's liability, if any, to plaintiffs in this action.

WHEREFORE, The Union prays that this action be dismissed with prejudice and that the Union be awarded its costs and attorneys fees in this matter.

DATED: April 20, 1983.

BREDHOFF & KAISER
1000 Connecticut Ave., N.W.
Washington, D.C. 20036

FULLER & HEISE, CHARTERED
P.O. Box 130
Caldwell, Idaho 83605

MICHAEL E. MCNICHOLS
P.O. Box 666
Orofino, Idaho 83644

BERNARD KLEIMAN
General Counsel
United Steelworkers of America
One East Wacker Drive
Chicago, Illinois 60601

PAUL WHITEHEAD
Assistant General Counsel
United Steelworkers of America
Five Gateway Center
Pittsburgh, Pennsylvania 15222

BETTS, PATTERSON & MINES
900 4th Avenue, 40th Floor
Seattle, Washington 98164

Attorneys for Defendant,
United Steelworkers of
America

By /s/ Wayne P. Fuller
WAYNE P. FULLER

[Certificate of Mailing Omitted]

IN THE DISTRICT COURT
OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF SHOSHONE

[Title Omitted]

PLAINTIFFS' ANSWERS TO SECOND SET OF INTERROGATORIES

COMES NOW the above named Plaintiffs, by and through their attorney, Kenneth B. Howard, Jr., and in answer to Defendant, United Steelworkers, Second Set of Interrogatories, do hereby answer as follows:

INTERROGATORY NO. 1: Describe separately and in detail the factual basis of each of the following allegations contained in paragraph XIV of Count One of the amended complaint:

a) That "[t]he Defendant undertook to act as accident prevention representative and enforcer of an agreement negotiated between the said Defendant on behalf of the deceased miners";

b) That the defendant "acted negligently in [that] . . . [i]t misrepresented its safety concern and expertise to the rank and file";

c) That the defendant "acted negligently in [that] . . . [i]t failed to develop adequate safety programs for its union membership";

d) That the defendant "undertook to provide representatives who inspected and pretended to enforce the contractual accident prevention clauses";

e) That the defendant acted "negligently, to wit . . . [i]t failed to require mine evacuation on first evidence of smoke underground";

f) That the defendant acted "negligently, to wit . . . [i]t failed to require fire drills";

g) That the defendant acted "negligently, to wit . . . [i]t failed to require personal protective equipment";

h) That the defendant acted "negligently, to wit . . . [i]t failed to require adequate protection against spontaneous combustion of discarded timbers underground";

i) That the defendant acted "negligently, to wit . . . [i]t failed to require adequate emergency egress from the mine."

(With respect to subparts b, c, e, f, g, h, and i of this interrogatory, the answer should be, *inter alia*, describe in detail each wrongful act or omission which is referred to in the allegations of the amended complaint that are quoted in the subpart, and would describe in detail the factual basis of plaintiffs' contention that such act(s) or omission(s) constituted a breach of a duty owed by defendant to plaintiffs and/or to plaintiffs' decedent).

ANSWER:

(a) The Defendant, International Union, assisted in counsel of the local union and supplied the local union with the basis upon which the contract between the local and the company was made. In the capacity of counselling, advising and assisting the local, the International collected consideration from the local union and the individual miners by way of dues and held themselves out to the local as being experienced in mine safety and able and available to enforce mine safety violations. The International further assisted in negotiating terms in the contract relating to mine safety, which it then failed to follow-up by providing sufficient or reasonable support or technology to enforce those terms. Further answers to this Interrogatory will be provided upon the competion of the depositions of the agents and employees of the International Union scheduled to be taken prior to July 15, 1983.

(b) The Sunshine Mine fire of May 2, 1972, developed as a result of unsafe and improper mining procedures in that the fire developed and spread throughout the mine without sufficient warning to the miners underground, and that the safety appliances provided for the miners were inadequate, defective and improperly maintained in that they were rusted, corroded and otherwise insufficient to provide safe passage for a miner utilizing them and, further, that the miners were inadequately trained in the use of self-rescuers and other safety procedures for mine evacuation. The mandatory standards set forth by the State of Idaho and the U.S. Department of Mines were not complied with with regard to establishing adequate emergency exit procedures and passages. The Union, through the Safety Committee, failed to reasonably perform its inspections, failed to uncover obvious and discoverable deficiencies in the mine safety program, including the above mentioned self-rescuers, an evacuation procedure, improper ventilation, inadequate mine safety training, and other such relevant deficiencies as set forth in the final report from the U.S. Department of Interior relating to the Sunshine Mine fire of May 2, 1972. Further answers to this Interrogatory will be provided upon the completion of the depositions of the defendant's agents and employees scheduled for conclusion by July 15, 1983.

(c) The Defendant Union provided no reliable evacuation drills or fire drills or procedure. It failed to utilize the Safety Committee to educate and acquaint the Safety Committee and its members with sufficient information by which the Committee could perform adequate safety inspections and enforce recommendations and, further, that the Defendant was negligent in failing to develop adequate facilities for ordering the mine shut down and insuring worker safety where evidence of fire existed and that it failed to provide adequate training to establish methods of inspection for determining and detailing inadequate safety equipment, including ventilation, safe

harbor exists, equipment and other such deficiencies as noted in the final report by the U.S. Department of Interior. Further answers to this Interrogatory will be provided upon completion of the depositions presently scheduled to be concluded prior to July 15, 1983.

(d) The Defendant caused to be established a joint management/labor safety committee which, by the contract language, purported to establish influence by the Union on safety measures being taken within the mine for employee safety; where, in fact, those inspections were improperly and inadequately performed because the members of the Safety Committee were not adequately trained or acquainted with measures which could or should be taken, nor were they adequately trained or acquainted with how to properly inspect and what to inspect for. As a result of the failure to adequately inspect the mine working area and failure to adequately develop a systematic method of mine inspection which would have been effectual, the efforts proved ineffectual and served only to provide an "image" of proper inspection. Further answers to this Interrogatory will be provided upon competion of the depositions of the agents and employees of the Defendant scheduled for conclusion by July 15, 1983.

(e) The Defendant failed to provide any guidelines or procedures which would safeguard its members against death and injury due to mine fires by insuring that adequate direction was given in the event of a mine fire and that in the instance of the fire of May 2, 1972, no evacuation order was given and a considerable amount of time passed prior to any warning being given to miners below ground. Further answer to this Interrogatories will be provided upon competion of the depositions of the agents and employees of the Defendant scheduled to be completed by July 15, 1983.

(f) See Answers given to Interrogatory No. 1, a thru e.

(g) The Defendant failed in its duty to perform reasonable inspections and to determine that the personal protective equipment, i.e., self-breathing apparatus and other rescue equipment, including the ventilation system, hoist-way, notices of evacuation routes, evacuation procedures, etc., were maintained in a manner sufficient to enable the reasonable evacuation of the mine in a safe fashion. The Defendant also failed to properly inspect and determine whether or not the warning system was adequate and proper procedures were in place to initiate the warning system upon the happening of an emergency or need for evacuation. Further answer to this Interrogatory will be provided upon completion of the depositions of the Defendants agents and employees now set for competion no later than July 15, 1983.

(h) The Defendant failed to properly conduct safety inspections to determine potential sources for ignition and also to discover potential sources of fuel for underground fires and that the members of the Union involved in the joint Safety Committee were not sufficiently informed and instructed in order to provide adequate or reasonable inspections of the mine area. Further answers to this Interrogatory will be provided upon competion of the discovery depositions presently set to be concluded by July 15, 1983.

(i) See Answers given to Interrogatory No. 1, a thru h.

INTERROGATORY NO. 2: Do plaintiffs contend that the defendant is liable for any acts or omissions besides those described in the answer to Interrogatory 1? If the answer is yes, identify each such act or omission, and for each such act or omission, describe in detail the factual basis of plaintiffs' contention that the act or omission was wrongful.

ANSWER: Yes. Failure on the part of the Defendant to properly train, identify, inform and develop procedures and work rules relating to all of the short comings which were a proximate cause of the death of the decedents as outlined in the final report of the U.S. Department of the Interior are items which the Plaintiffs contend the Defendants were negligent in performing. Reference should be made to the final report for those specifics.

INTERROGATORY NO. 3: Identify each act or omission of the defendant which plaintiffs contend was jointly and/or severally a proximate cause of plaintiffs' decedent's death, and for each such act or omission, describe in detail the factual basis of plaintiffs' contention that such act or omission was a proximate cause of said decedent's death.

ANSWER: See the Answers to Interrogatorys number 1 and 2, and see the U.S. Department of Interior, Bureau of Mines, Health & Safety Report—Final Report of Major Mine Fire Disaster, Sunshine Mine, May 2, 1972, by Stanley M. Garrett, E. Levi Brake, Robert C. Riley, Roland V. Wilson.

INTERROGATORY NO. 4: Identify each act of the Defendant to which Plaintiffs refer in paragraph II of Count Three of the amended complaint which alleges that "the acts of the Defendant as specifically set forth in paragraph XIV of Count One were willful, wanton, reckless and grossly negligent, and for each such act describe separately and in detail the factual basis of Plaintiffs' allegations that the act was wilful, wanton and grossly negligent.

ANSWER: The answer to this Interrogatory must await the outcome and completion of the depositions of the agents and employees of the Defendant scheduled for competion prior to July 15, 1983. The essential acts and facts upon which this claim is based are the same as those set forth in answers to earlier Interrogatories.

INTERROGATORY NO. 5: Identify each act on the part of the defendant to which Plaintiffs' refer in paragraph III of Count Three of the amended complaint which alleges that "the hereinabove set forth acts on the part of the Defendant were such that they support the award of punitive damages" to Plaintiffs, and for each such act describe separately and in detail the factual basis of Plaintiffs' allegation that act was such that it supports the award punitive damages to Plaintiffs.

ANSWER: See Answer to Interrogatory No. 4.

INTERROGATORY NO. 6: Describe in detail the factual basis of the allegation in paragraph IV of Count Three of the amended complaint that "the acts hereinabove set forth . . . on the part of the Defendant are such as to support the award of attorney's fees incurred on behalf of (plaintiffs)."

ANSWER: See answers to above Interrogatories. Further, it is the position of the Plaintiffs that the action is defended without foundation and frivolously and, further, that attorney fees are allowable under Idaho Code § 12-121.

INTERROGATORY NO. 7: With respect to each of the "representations" described in subparagraphs A-E of paragraph II of Count Five of the amended complaint, which the defendant is alleged to have "made . . . to its members, the rank and file of said Union," describe in detail the factual basis of the allegation that such representation was made. (For each such alleged representation, the answer should state, *inter alia*, the individual(s) who made the representation, the individual(s) to whom the representation was made, any and all witnesses to the making of the representation, the date(s) on which the representation was made, the form(s) in which the representation was made (e.g., oral communication, letter, bulletin, etc.), and the exact content of the representation).

ANSWER: The complete answer to this Interrogatory must await completion of the depositions which are presently scheduled to be concluded by July 15, 1983.

INTERROGATORY NO. 8: With respect to each representation described in the answer to Interrogatory 7, state separately whether Plaintiffs make any or all of the following contentions, and for each such factual contention made by Plaintiffs, describe separately and in detail the factual basis of the factual contention:

(i) That the defendant acted (or failed to act) in a manner which as contrary to its representation;

(ii) that the representation was false;

(iii) That the defendant knew that the representation was false (if plaintiffs contend that it was false);

(iv) That the defendant was recklessly indifferent as to whether or not the representation was true and would be acted upon;

(v) That the representation was made willfully, maliciously and intentionally and with an intent to deceive plaintiffs' decedent;

(vi) That plaintiffs' decedent was ignorant of the falsity of the representation (if plaintiffs contend that the representation was false);

(vii) That plaintiffs' decedent relied upon and/or acted upon the representation to his detriment (and if so, state whether plaintiffs contend that such action and/or reliance by their decedent was reasonable);

(viii) That the defendant intended that the representation should be relief upon and/or acted upon by plaintiff's decedent; and

(ix) That the representation was jointly and/or severally a proximate cause of plaintiffs' decendent's death;

b) In each instance where plaintiffs do so contend, describe in detail the factual basis of said contention.

ANSWER: The complete answer to this Interrogatory must await completion of the depositions which are presently scheduled to be concluded by July 15, 1983.

INTERROGATORY NO. 9:

a) Describe with particularity each and every respect in which plaintiffs contend that the acts or omissions of the defendant alleged in the amended complaint caused damage to them and/or their decedent, and for which plaintiffs contend that they are entitled to recover damages from the defendant.

b) For each item or damages described in the answer to subpart a), state the dollar amount of the damages which each plaintiff contends he or she is entitled to recover.

c) Describe in detail the factual basis of each contention stated in the answer to subpart a) and b).

ANSWER: The complete answer to this Interrogatory must await completion of the depositions which are presently scheduled to be concluded by July 15, 1983.

INTERROGATORY NO. 10:

a) With respect to each of plaintiffs' answers to Interrogatories 1-9, and all subparts thereof, identify separately for each answer:

i) All documents known to plaintiffs or to any person acting for them or on their behalf, including their attorneys, which describe, refer to, support, contradict, or relate to the statements made in the answer; and

ii) All persons known to plaintiffs or to any person acting for them or on their behalf, including their attorneys, who have knowledge or information that is or may be relevant to the statements made in the answer.

b) i) At any time during the period in which plaintiffs contend that the defendant committed wrongful acts alleged in the amended complaint, and/or during the period in which plaintiffs contend that they or their decedent suffered harm for which plaintiffs are entitled to recover damages from the defendant, did any of the plaintiffs or their decedent maintain a diary, calendar, journal, notebook, or other writing or set of writings in which any of the plaintiffs or their decedent made reference to events affecting him or her?

ii) If the answer to subpart (i) is yes, identify each such document.

ANSWER: See answers to preceding Interrogatories.

DATED this 9th day of May, 1983.

/s/ Kenneth B. Howard, Jr.
KENNETH B. HOWARD, JR.
Attorney for Plaintiffs

[Certificate of Mailing Omitted]

IN THE DISTRICT COURT
OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF SHOSHONE

[Title Omitted]

ANSWERS OF UNITED STEELWORKERS OF AMERICA TO INTERROGATORIES TO DEFENDANTS

INTERROGATORY NO. 6: Please set forth the names, addresses and position held with the Defendant of all persons charged with the responsibility of assisting the various local unions with job safety training, mine safety inspection procedures and enforcement of safety violations within the mines in the 1962 thru 1972 era.

ANSWER: The Steelworkers do not employ any persons who are "charged with the responsibilit[ies]" as described in the Interrogatory above. The Safety and Health Department consists of a Director and a small group of persons whose function it is, on behalf of the International, to provide general advice, guidance and education to local union Safety Committees concerning various safety and health matters. In addition, the Safety and Health Department, in conjunction with the Legislative Department, participates in efforts to initiate and support the enactment of federal and state laws designed to protect workers from safety and health hazards, such as the Occupational Safety and Health Act of 1970 and the Federal Metal and Non-Metallic Mine Safety Act of 1966, and/or to support efforts to strengthen existing laws. Members of the Safety and Health Department

also serve on committees at the national, state and local levels whose jurisdiction involves safety and health legislation, air pollution, and standard setting (e.g.).

A review of the personnel records indicates that during the period 1962-72, the following persons were employed in the Safety and Health Department:

Directors

Frank Burke—at least as early as 1966 until 1969 (address unknown);

Paul E. Schremp—1969—March 1972 (address unknown);

Adolph Schwartz—April 1, 1972—February 1983

Other personnel

Marco Vestich—Assistant to Director, June 1, 1969 —May 1979

Adolph Schwartz—Assistant to Director, June 1969 —March 31, 1972

Francis Grimes—member of staff of Safety and Health Department from approximately February 1971 until appointed Director in February 1983.

* * * *

ORAL DEPOSITION OF LAVERN ALBERT MELTON TAKEN JULY 6, 1983

* * * *

[3] Q Prior to that, as I understand it, you were the President of a Local over in the Kellogg area?
A Yes.
Q I'm sorry, I forgot the number.
Mr. COHEN: 5089.

* * * *

[15] Q I recall seeing someplace, Mr. Melton, a letter that you had directed to Mr. Atha. I believe Mr. Atha

was the safety engineer with Sunshine prior to Mr. Longhart, and I recall a letter that you had written just shortly before the fire complaining about certain portions of the mine not conforming to federal requirements for dual access. Do you remember that letter?

A Yes.

Q Can you tell me in as best detail as you can recall, what brought that to your attention, that particular condition?

A I worked on shaft repair, and quite often we have tie-ups in the shaft, or the rig in the shaft, which immobilizes the shaft. I can't really say what called this to my attention. I don't know if a co-worker complained to me.

Q A what?

A Co-worker called it to my attention or if I became aware of it just from my working with the shaft and being adjacent to that working area. I really don't recall now how I became aware of this, but I became aware of it and there was, I remember the argument was that the company published in a newspaper that production had started on this level, and I knew that they should have a secondary escapeway before production started, and they made my complaint based on that.

[16] Q What level was that?

A I don't recall.

Q How did you become aware of the fact that a secondary escapeway should be provided; how did you know?

A I read—I, well, I really can't say. I can guess. I probably read it in the State Code.

Q What did you do as a result of this information being passed on to you?

A I am not sure the information was passed on to me, or if I—

Q Or if you came up with it yourself; once you got it, however you got it—

A I called the company's attention to it.

Q How did you do that?

A By the letter.

Q Was that letter offered by you?

A Yes.

Q Is there any particular reason why you went that route as opposed to going to the Joint Safety Committee?

A Well, you can't—I wasn't a member of the Joint Safety Committee.

Q I understand that. Why didn't you refer it to them?

A The Joint Safety Committee meets once a month and if I could see something that I thought should be addressed, I would address it.

[17] Q Is there some reason you used the letter approach as opposed to the grievance approach?

A Well, you can't file a grievance on a safety matter.

Q You can't file a grievance on a safety matter?

A No.

Q Could you explain that to me?

A Well, if there is a safety recommendation that is made, it is not something that is subjective to grievance procedures, and the way that the Joint Committee functions is that the company has to approve a recommendation. The general manager, my manager has to approve, and if he didn't approve, well this meant that you had to have a majority of the Safety Committee members' agreement to make a recommendation in the first place, and the Safety Committee, the company is part of the Safety Committee. It is a joint committee. They would also refer the matter to the mine manager before they would say anything. They would not act independent of my men, and so their recommendation would come from the mine manager, and of course to get a majority vote we would have to have one of the company people rule against management. I have never experienced that happening before.

Then the other way is if you have something that was immediate danger, then you take, and if the majority of the committee would agree, that there is something wrong, then that would be subject to the grievance procedure; but just the [18] routine everyday, I guess probably you'd say things that were not of immediate concern wouldn't be subject to the grievance procedure, even if the parties made recommendations and the company didn't follow them. Only just the things that had to be immediately handled.

Q You lost me a few sentences ago when you said something about if it was an immediate problem, and if the committee agreed, then you could submit it as a grievance. Would you explain that for me?

MR. COHEN: Why don't you go through the agreement?

A Probably the agreement speaks for itself better than I could speak for the agreement. This is when an individual has a particular working agreement—page 30, it is Article 9, Section 6. What it says if the company concurs with you that it should be taken care of if then for some reason it isn't taken care of, then you can file a grievance, but the company has to agree with you and something has to be done before it is subject to the grievance procedure. If they disagree with you to start with, there is no contract lineage decrees.

Q (By Mr. Howard) So you didn't use either one of those avenues then in your case, you used a third avenue which was just a direct letter to the safety engineer?

A Yes.

Q What results, if any, did you get from that letter?

A Oh, the company said that I was—the gist of it was [19] that I was misinformed, that the newspaper article was a, I guess it was bragging about how quick they were going to get the work done, but the newspaper article was not correct. There was no production. They fully intended to do exactly what they were supposed to do before production, so I guess what they told me was

that I was making a complaint over a circumstanee that hadn't happened yet.

Q Did the issue drop at that point or was there something further done by you, or by them?

A As far as I know, the company did go ahead and drive the rigs before there was any production.

Q And provided a second escapeway at that particular level?

A Yes.

Q What other avenues were available to you to have corrected the deficiencies that you noted at the mine? We have already discussed the Safety Committee, the individual grievance approach, and then you have developed a third approach on your own initiative of writing letters to the safety engineer.

A That was really, that approach is really part of the other approach that we have, is making complaints to the federal and to the state mine inspectors, and the letter-writing. In fact, I consulted with the state as part of my letter-writing; just really why I wrote the letter, more or [20] less confirmed what I said to the state and what the state said to me. I guess that is what we relied on mostly, is the state rather than the federal. We relied upon the state mine inspectors. If we had a problem we would say hey, fellows, why don't you come out and look at this and see if it is a violation of state code. If it is, see if we can do something about it.

Q Did you also have that relationship with the federal inspectors?

A No.

Q There were federal regulations at the time of the fire in May of 1972; isn't that correct?

A Yes.

Q They had been in effect a few years at that time; is that right?

A Yes.

Q Would you on occasion call the federal inspection when you felt that conditions weren't being corrected?

A Probably, but I don't recall.

Q You had a longer relationship with the state, I take it that is the reason you would call them?

A The problem is the state code said that the state safety regulations had to equal or exceed the feds, so we preferred to rely on the stronger hold.

Also the company would not allow walk-arounds with [21] the federal people, so we didn't have contact with the immediate federal people. I didn't know who they were. But when they would come on the property, we couldn't go on them with the walk-arounds, so we were sort of isolated from the federal people. I didn't know their names, I didn't know who they were. I knew they came, I knew they went through the mine and they were sort of separate entities. So we relied on the state. I knew the state people that—I knew the code was stronger, or at least as strong, and we could go on the inspections with them.

Q When the federal people were involved in inspecting the mine, did you ever approach them with this problem that you were not able to accompany them on these inspections, and you felt that—

A I'm certain that I did and—

Q Did you get any relief at all from them?

A No. There was no—no, all they knew is what the code says, and the code didn't call for it so—

Q Didn't call for a representative?

A For a walk-around. For participation.

* * * *

[23] Q * * * Were you the primary contact with the Local Union, with regard to contacting the state people and the company?

A No.

Q With regard to safety?

A (Witness shakes head negatively.)

Q Who was?

A Whoever wanted to be.

Q Did you have anybody designated from the Union to—

A We had our Safety Committee.

Q There was a chairman of the Safety Committee, or some kind of a—

A There was a chairman of the Union, which is part of the Safety Committee. There was a chairman of the company which was part.

Q That was Mr. Beehner?

A Yes.

Q He died in the fire; is that right?

A Yes.

Q Mr. Beehner, was he then the appointed individual to contact the state or company with regard to safety complaints?

A I don't think that would be a fair statement.

[24] Q Was there any organization to the way that things were done, or did he just happen to be—

A Whoever happened to be there. We had a Safety Committee, the Safety Committee would meet monthly. The Safety Committee would go on walk-around inspections with the state people. They would talk with the state people once a month on these walk-arounds, so there was a good routine established method of continual contact with the state authorities.

Q And who was the principal contact then, was it Mr. Beehner?

A That would be Mr. Beehner.

MR. COHEN: I think one problem we have got here is the question of who is the contact. There is the presence of people, that is the company people. There is the presence of state people. I think your question, Ken, is predicated on the motion that you always have to be going and communicating to get someone to come there. I think that is—

A They were on the property.

Q (By Mr. Howard) I don't mean to presume anything. Whatever the facts, the contact I was wondering about was whether it was channeled through one individual so it could be coordinated.

A Don and myself both worked eight hours a day in the mine. I worked graveyard. That meant I would change into my [25] street clothes when the day shift people were coming in to work. I had an opportunity to see everybody in the mine that wanted to see me every day, and then when I went to work and I went to work when the night shift, when the second shift was coming off shift, so I had probably contact with everybody underground on a daily basis. If I recall right, I think Don was on a straight day shift and that is why, that is another reason why I liked Don on that committee, because his job was a straight day shift job, and the mine rotates two weeks day shift, two weeks night shift, so if I had a person who was a day shift employee, then he would never see the night shift people, because when he was night shift then they were day shift. That was one of the criteria that I looked for on the Safety Committee, a person that—in fact, Alexander was the chairman of the committee before Don, and Don got shifted to a rotating shift, or not Don, but Bud Alexander, and Bud got shifted so he would change with the crews, so that he came to me and told me, you know, I just can't be as effective this way, you should get somebody that has a straight day shift. That is one of the reasons that I picked Don, so we had among ourselves, we had constant contact with all of the employees on a daily basis, and we had constant contact with the federal authorities on a monthly basis.

Q And the constant contact with the employees was important for what reason?

[26] A If the employee had any concern for safety, or any concern for anything, as far as that goes, but on the Safety Committee, he would be able to take and relate his concern to the Safety Committee people. He could

relate his concern if it was a non-safety item to the grievance people, or to me.

(Discussion held off the record.)

Q We were back at a point where I think you were talking about, he could contact the grievance people if it was a non-safety item, and he could contact the safety people if it was a safety item.

A Uh-huh. In fact, Gordon Walkup was on both committees. He was a Safety Committee person and a Grievance Committee person.

Q I could see where there would be some overlap, depending on the situation if it was an immediate safety problem there may also be a grievance; is that right, it may qualify as a grievance?

A No.

Q All right, I thought we—maybe I'm mixed up with Mr. Marshall's deposition, but I thought that if the worker was confronted with an immediate safety hazard, that he could, and it may be grounds for a grievance. Do you recall any procedure like that?

MR. COHEN: If you are paraphrasing Mr. Marshall's [27] answer, I think you ought to go the one step further. He said that if it was an immediate hazard that threatened the safety, there was a provision under the safety article language to do certain things, including filing a grievance.

A If an individual came to me, or to Don, and said, "I saw some loose ground in this area and it should be taken care of," just as a concern for his fellow men, this wouldn't be subject to the grievance procedure. If the company didn't want to take care of it, we have called the state people or we have called the feds, but if the guy is in the condition where he has to work under that loose ground, he has a right to speak and refuse to work. He has a right to go home and then the grievance procedure comes in on an individual's concern, but there are, these are two different areas: concern for my fellow worker where it doesn't really bother me—

Q That is a Safety Committee concern?

A Well, it is all, everything is concerned with the Safety Committee, but the individual cannot file a grievance on an unsafe condition that he thinks may hurt somebody, but he can if it is going to put his life in peril, and he says, "I don't want to work there", and he has a right to refuse, and if the company protests, he has a right to reassign or to go home and then the whole thing gets pretty involved on an individual's concern.

* * * *

[36] MR. COHEN: He has got a question that is pending. I think you had a question pending that was, "Was anything done relating to evacuation plans at any time prior." He has a question to you whether any time prior to May of 1972—Okay, we know what your situation was, let us focus on that question and see if you can answer pre-May 1972, did you do anything in your official capacity as the President relating to evacuation plans?

A Well, the only thing I can recall was that they had a fire, and they had an evacuation man, but they didn't evacuate them. They didn't warn anybody, and I was a little bit awed over that, because I thought they should notify, at least notify the people. They didn't even notify the state when they had a fire.

Q (By Mr. Howard) This was just like six months to a year before the disaster?

A Just, probably; I can't really recall, but it wasn't, see we had two situations. We had a fire in the mine, and then [37] we had a forest fire. We were concerned that they put half the guys fighting the forest fire, and the other half underground to work. We didn't like that. We thought they shouldn't have been sent forth to the other fire. The men were underground, and they didn't warn them, and they didn't get them out, and I wanted them to—I thought they should have done this and they didn't.

MR. COHEN: Okay, the pending question, you have told us the circumstances. What if anything did you do?

A Well, I checked with the state, and the state told me that they didn't know anything about it, so they came out and investigated, and they found out the Stench Warning System wasn't hooked up, and I didn't know what the Stench Warning System was, and I still don't, but anyway then they assured me that Sunshine took care of it.

MR. COHEN: Who is they?

A The state. Spear was the guy we talked with. He said that they have taken care of the situation, and it won't happen again.

Q (By Mr. Howard) That was the occasion where the fire occurred underground? It was some kind of an electrical short that started the fire?

A I can't really remember, gosh, it's been so long, you know, fires are not that uncommon, small fires.

Q Underground?

[38] A No, even to this day, there is probably a fire almost every month, but they are always small, and I just can't recall. I think this was an electrical short that burned a post and cap, but I am not sure. It was an electrical fire.

Q As a result of that knowledge, on your part, though, where you know that fires occur regularly underground, did you ever inquire as to a training program for the orderly evacuation of miners in the event of a major fire?

A The company assured me that they had an escape plan, and that it was posted, and everybody could read it and that it worked.

Q They assured you that prior to the May 2 fire?

A Pardon?

Q They assured you of that prior to the May 2, 1972, fire?

A I don't know if they assured me—I don't think that would be the proper term, but the state and the—

I can't remember who I talked with, but they told me that Sunshine had a plan and I don't know if the state said it was, anyway, there was nothing we could do about it.

Q This was prior to the May 2 fire?

A The main thing I wanted to take and have a drill, you know. Everybody told me that the company says there was no problem, because there is no reason to have a drill, because [39] all you are going to do is, they accused me of wanting to interrupt production. They said, you know, Melton, all you are going to do is shut the mine down for a day to have a drill on a plan that is going to work. There is no point in having the drill. The state and the feds said that there was no law that requires them to have a drill to evacuate the persons to the surface.

Q Your request to have that drill was prior to the May 2, 1972, fire?

A I can't say definitely. I think so, but I can't say. I'm sure it was, but—

• • • •

[52] Q What was your job as President, as it relates to the Safety Committee?

[53] A Well, I appointed the committee and we called for the committee reports at Union meetings, monthly, and listened to the report and communicated with the—you see, it was a real small group of persons. It has 500 people. It was a large group, but it was a pretty close-knit group. You all shower in the same area at the same time. You all change clothes together, so we saw each other on a daily basis. It is not like a committee that, you know, exists somewhere, but you see seldom, because we were in constant contact with each other daily.

Q I appreciate that you were probably in constant contact with them, personally as well as having an opportunity to talk with them—

A Even off the job at the bars.

Q What was your job as President, what did you conceive your job as President to be?

A To conduct meetings, appoint committees.

Q When they say you are an ex-officio member of the committee, as far as the Union is concerned, what does that mean?

A That means that you are a part of the committee, but you have no voice or vote, especially vote.

Q Were any members of the Steelworkers Union, prior to May 2, 1972, what you would say experts in mine safety?

A Not that I know of.

• • • •

[68] Q (By Mr. Howard) What was the Union's job with regard to safe working conditions?

MR. COHEN: I am going to object to that question as having been asked and answered.

A I really don't know. I don't even know what you are asking: What was the Union's job?

Q (By Mr. Howard) Yes, with regard to safe working conditions at the mine. Did they have any responsibilities at all?

A Represent the employees.

Q In what fashion?

A If they had a complaint, process the complaint; if they bring anything to our attention that should be brought to safety meetings. I guess talk to the employees on a daily basis, which we did, and convey any concerns that we had to the company.

Q How about doing independent investigations or inspections of the mine to determine safe working conditions? Did you have any obligation in that?

A I'm sure every employee did this on a daily basis.

Q How about the Safety Committee, did they have any obligations in that regard?

A I think they probably, on a daily basis, where they were working in the mines. See, not all of the committee members worked underground, but the ones that worked

underground, [69] I'm sure that they would observe what is going on around them on a daily basis.

Q What was the obligation—

MR. COHEN: I am going to object to the use of the word obligation. It calls for a conclusion. Why don't you ask him to re-phrase that?

Q (By Mr. Howard) Well, I am going to continue to use that phraseology at this point in time.

A I don't understand really what you mean by obligation.

Q Do you know what the term obligation means?

A I don't know how you view it. I am not sure. I would have to look it up in the dictionary.

Q What was the responsibility of the Joint Staff Committee?

MR. COHEN: Objection to the use of the word responsibility. Why don't you talk about the function, that's okay. The word responsibility is a word that has legal connotations to it, and I object to the use of the word responsibility. Go ahead, answer.

A The function of the Safety Committee was to convey employees' concerns to the company.

Q (By Mr. Howard) Is that all?

A To meet monthly, to meet as the labor agreement says with the plant manager concerning any safety and health [70] matters; but not to handle grievances.

Q Is that all?

A I could read this whole thing here.

Q Was it part of their job to work toward the objective of eliminating accident and health hazards?

A Let me read this. What was the question again now?

Q Was it part of their job to work toward the objective of eliminating accident and health hazards?

A This is what the labor agreement says.

• • • •

ORAL DEPOSITION OF AUSTIN SMITH
TAKEN JULY 7, 1983

• • • •

[12] Q Did you personally service the Coeur d'Alene mining district outside of the 1953-1954 era?

A Yes, but only on a spasmodic basis, to replace somebody.

Q I take it that the Coeur d'Alene mining district had its own Staff Representative after its organization?

A Yes.

Q That was not you, it was somebody else?

A. Yes.

Q Have you ever had occasion to deal with the Safety and Health Department back in Pittsburg?

A No.

Q Are you familiar with any of the information or documentation that they published and sent out concerning health or safety?

A Only what would be passed through the office to be channeled to Local Unions.

Q Are you familiar with any kind of a book, safety book, that they put out?

A No sir.

• • • •

ORAL DEPOSITION OF LAWRENCE MARSHALL
TAKEN JULY 7, 1983

• • • •

[9] Q One of your functions was as an organizer, as well as other functions that you indicated to me a few minutes ago: elections, assisting the membership, etc.?

A Right.

Q I take it that your original functions in the Wallace-Kellogg area, you presently were involved in the organizing aspect of your job, that is the reason that you call yourself an organizer; is that right?

A Yes.

Q The other aspects of the job of staff representative, which is to assist in the negotiating and handle the Four Step grievances, the elections and that sort of thing; did you receive any training in regard to those aspects of your job of staff representatives?

A No.

Q Did you receive any written material, any kind of manuals or instructions, or job descriptions or anything like that to indicate to you what your job function was, let's say in the area of negotiating labor agreements?

A No, I did not.

Q Initially, and now we are still talking back in the 1967 era, was there any hierarchy within the Steelworkers that you would go to with advice, if you were involved in, let's say, handling the Four Step?

[10] A Austin Smith.

Q Was he like a senior?

A He was a subdistrict director.

Q What sort of function did the subdistrict director have then? Was that basically to advise and direct you?

A Yes.

Q To provide you with information that you needed, upon request?

A Yes.

Q When you were involved in your capacity, and involved in the negotiation of labor agreements, in the initiation of the negotiation, would you be supplied any goals from the International that you would use to help develop the negotiations? Did my question make sense to you?

A Generally there is what we call the Wage Policy Committee which sets various goals for the Steelworkers, and many industries.

Q And the Wage Policy Committee, was that to make some sort of written recommendations or directives to you as a field man?

A Not to me, no.

Q How would you as a field representative involved in the negotiations, become aware of the national policies for that particular year?

A By attending conventions and conferences.

[11] Q Besides obtaining information verbally of these conferences, was there information or goals that was developed in written form?

A There would be wage policy statements, yes.

Q How about other aspects of the contract, other than wages?

A Well, the wage policy, meaning that in a statement itself, it includes other items, other than wages.

Q Does it include such things as health and safety?

A Yes.

Q So the Wage Policy Committee set the national goals, if you will, for all aspects of negotiation; not just wages, but—

A Yes.

Q As you went in negotiations, initially with the company, at the end of a contract, would you have provided to you, the essential format of a proposed new contract?

* * * *

[12] Q (By Mr. Howard) Let me isolate my question then, to the Wallace/Kellogg area in 1967, the 1967 era that may have not been a negotiating year, but would you have been provided with anything in writing that set forth essentially what you were proposing as a contract?

A I may have, but I really am not sure. I just don't remember, Mr. Howard. I could have at that point in time. I don't think that was the year. It was just prior to that when we negotiated the agreements, in '67, because there were several contracts that fell at different dates.

Q At different Locals over there?

A Yes.

Q What I am trying to get a handle on, Mr. Marshall, is I would imagine that representing the Steelworkers International, you wanted to see some consistency between contracts, within your subdistrict; is that correct?

A Well, we always strive to better or improve our labor agreements in all of our contracts, especially the area in which I worked, the Kellogg area.

• • • •

[13] Q (By Mr. Howard) Again, my question is looking essentially for procedure at this point in time, and if my question presumes the wrong things, feel free to tell me so.

A Okay.

Q What I am looking for, what kind of guidance you were given or what kind of guidance was provided you from the International to assist you in developing these local contracts?

MR. COHEN: Which local contracts?

MR. HOWARD: The Wallace-Kellogg area.

MR. COHEN: By that you mean just mining, or are you talking about anything?

MR. HOWARD: Anything he was involved in as a staff representative in that area.

A Well, really we didn't have any set policy for any particular mine. Of course, we were always striving to improve the wages, hours and working conditions of all of the properties that we were representing, and to improve the contracts, and so that is how we would do it. So there was really no set policy as such, only to improve what we had in existence at [14] the time.

Q (By Mr. Howard) But when you say to improve something, I would imagine you were going to take what was in existence at the time, and you were going to increase it to some level?

A Yeah.

Q How did you determine what level you were going to increase it to, whether it was wages or other working conditions?

A Usually by the membership.

Q The membership of the Local Union?

A Yes.

Q You indicated before there was a Wage Policy Committee. Was that on a national scale?

A Yes.

Q Is that Wage Policy Committee, did they issue a report of their findings or recommendations?

A Yes.

Q Were there also other subdistricts or subareas of the Wage Policy Committee that would issue recommendations?

A No.

Q So the International itself would make certain recommendations in terms of policy, through the report of the Wage Policy Committee; is that correct?

A Correct. The Wage Policy Committee is a committee [15] of various Local Unions, all over the United States and Canada, and through the assistance of the International office, they developed policies pertaining to the various sections of the labor agreement which we should strive to improve our labor agreements on.

Q Right.

A Now, as far as the area is concerned, no we didn't have anything per se to strive for; only to improve our agreements.

Q When you say an area, you are talking about geographic areas, like Wallace/Kellogg?

A Yes.

Q But you would, as a local staff representative, then you would be guided by the Wage Policy Committee report?

A Not necessarily.

Q In terms of goals and national goals?

A Not necessarily.

MR COHEN: What we still haven't done here, Ken, I think what the problem the two of you are having, we haven't yet tied down the question of which industries, or whether or not the Wage Policy Committee "goals" applied to the industries you are talking about.

Q (By Mr. Howard) Let's go back into that, then. Let me start from a very basic standpoint, again, because of my ignorance of your area of work. This Wage Policy [16] Committee and the International, what industries does it represent?

A Basically steel, aluminum and cans, basically in those days.

Q In those days, we are talking about 1967 now?

A Yes.

MR. COHEN: Now, once again I am not objecting, obviously to your inquiring of this man's knowledge. The best evidence is the accuracy of the documents which are reflected in the International Union records, and you are aware of that?

Q (By Mr. Howard) Okay. The Steelworkers, however, had organized other industries besides the steel and aluminum and can industries; is that right?

A Yes.

Q What other industries had the Steelworkers organized, besides these three that you have identified for us?

A In the Kellogg area?

Q Nationally.

A There are many.

Q Give me some examples.

A The non-ferrous industry is what you are primarily discussing right now, is non-ferrous.

Q The non-ferrous industry involved all aspects from manufacturing through extraction and everything?

[17] A Yes, mining.

Q I take it the Steelworkers then had organized certain mining activities throughout the United States?

A Yes.

Q Did that include hard rocks as well as coal?

A Mainly hard rock. We may have had some coal, but I don't have a knowledge of that.

Q What was the extent of the representation by the Steelworkers, in the mining industries in 1967? Do you know industry-wise, do you have 5%, 10% of the mining industry?

A I have no idea.

Q Were there other areas that were organized, nationally, by the Steelworkers in mining, other than the Wallace/Kellogg area?

A Yes.

Q If you know, what other geographic areas were represented in the 1967 era?

A I'm sure we had the iron ore range in Minnesota. We had the copper industry in Arizona, New Mexico, Wyoming, Montana, California; virtually all over the United States and Canada.

Q Representation of miners was not a new endeavor of the Steelworkers at that time then?

A No.

* * * *

[24] Q So at the time of the fire at the Sunshine on May 2, 1972, there was a contract that was in effect at the time involving the International; is that correct?

A Yes.

Q That contract was entered into on what date; do you remember?

A March 11, 1970, I believe the date is.

Q And I take it negotiations for that contract would have involved some time period prior to March of 1970?

A Yes.

Q Do you know how long a period of time was involved with the negotiation of that particular contract?

A The agreement provides that we open the agreement no earlier than 90 or later than 60 days prior to the expiration of the agreement; so at that period of time, I would, after the 90-day period, I would write a

letter to open the agreement with management, and from that point on, we would set up meetings.

Q You would initiate those negotiations, would you, as a staff representative?

A I would assist, yes.

Q How would they be initiated? You said by a letter from you?

A I, being the International representative, staff representative, I would send a wage re-opener to the company [25] with a copy to the state and federal agencies which is required under the opening procedure, and notify them we were willing to meet with them to negotiate a new labor agreement.

Q Was that the first contract, the one in March of 1970, that you had been involved in negotiating as a staff representative?

A Yes.

Q Had you been involved in any contract negotiations, at any other capacity, prior to that?

A With Sunshine?

Q Yes.

A Earlier in 1967 and in 1964, just to set in negotiations, but not to negotiate.

Q In what capacity were you involved in the 1967 and 1964 negotiations? You said you just sat in.

A I was an organizer in the Kellogg area at that time, and in 1964 we had a labor dispute, and I assisted in handling the strike funds for assistance for the membership.

Q Did you sit through the entire contract negotiations in—

A No I did not.

Q In 1967 and '64?

A I did not.

Q I take it there were just several meetings that you attended?

[26] A Yes.

Q The 1970 contract negotiations, could you describe for me the organization that represented the Union at those negotiations? I take it there was a staff representative there. Were some Local Union people there also?

A Yes. In 1967, there was myself as a staff representative, Austin Smith, the subdistrict director—

MR. COHEN: Are you talking about 1967, or 1970?

THE WITNESS: 1970 he said.

Q (By Mr. Howard) 1970 is what I asked. You just said '67.

THE WITNESS: Oh, I knew we were talking about '70. 1970, excuse me. In 1970 there was myself, and Austin Smith representing the International Union for the Local Union. The president was Richard Fleming. George Gibson—

Q He was also the vice-president, wasn't he?

A Yes. Richard Terrel, I believe. May I refer to the—

Q That's all right. What I am basically asking for, is their positions. I don't care if you remember their names. You have already indicated in the other deposition the members that you remember in the grievance stage itself, as to who was there.

A Yes.

Q They would have been making the negotiations on [27] behalf of the Union then?

A Yes.

Q Who led that group? Who was the coordinator on behalf of the Union?

A I was usually the spokesman for the negotiations.

Q Was Austin Smith there on a full-time basis during those negotiations?

A Usually.

Q Did he have less experience than you in this particular area of negotiations?

A No he had more.

Q Why was it that you were the spokesman?

A Because I was the service and staff representative.

Q And he as the Subdistrict Director apparently had other districts under his—

A He had other local unions which he was assisting, other than mine.

Q Do you remember in the 1970 negotiations, any particular request by the Union in terms of this negotiation, relating to safety and health?

* * * *

[28] THE WITNESS: May I explain?

Q (By Mr. Howard) Sure.

A At the Local Union meetings, we have the input from the membership who make recommendations in the agreement. That is where we receive the recommendations to change the agreement.

Q And as a staff representative, do you also bring ideas to the Local Union that you have agreed on the national scale for them to consider in their negotiations?

A I try to.

Q And do you remember from either of those sources, whether it was the Local or whether it was from the International, any considerations of the 1970 contract relating to safety?

A I don't recall at that time, no.

Q Would there have been anything in writing that was generated in preparation for these negotiations, to alert you to various factors that either Local Union members, or the International felt was a policy that should be pursued in the negotiations?

A I think I alluded to the fact that that year we didn't have any requests from our safety and health department for any changes to be made at that time; and if there were any changes from the membership, I don't recall, but that is how we receive the changes.

[29] Q Do you know, as we sit here today, whether

there were any changes with regard to the health and safety portions of the contract between 1967 and 1970?

A To my knowledge there was no change.

Q Do you know when the last change had been made to that contract, prior to 1970; that portion of the contract, the health and safety part?

A I think many years. I can only go back to probably the 1964 agreement, and I think it remained the same from the 1964 negotiations, 1967 and 1970.

Q Prior to the 1970 agreement, did you contact your Health and Safety Department in Pittsburg, or did anyone on your behalf contact the Health and Safety Department in Pittsburg to determine whether or not they had any suggestions to augment the contract, to increase the health and safety provisions contained in there?

A I don't believe so.

Q Did you review with the Health and Safety Department in Pittsburg, prior to negotiating the 1970 contract, the provisions that were contained in the local contract?

A I don't believe I did.

Q Prior to 1970, did you receive any training at all in terms of mining safety?

A No I did not.

Q You had never been a miner prior to that, had you?

[30] A No.

Q Did you have anybody that was immediately accessible to you on your staff, that was in your mind an expert on mining safety?

A No.

Q In negotiating the 1970 contract, as we sit here today, do you remember considering any changes at all to the health and safety portion of that local contract?

* * * *

A I may have, but I don't remember. It has been a good many years ago.

Q (By Mr. Howard) I understand that. It is understandable, also.

Your job as staff representative during that period of time encompassed a certain geographic area; is that right?

A Yes.

Q Could you describe for me the bounds of that geographic area?

A In 1967 I was living in Missoula, Montana, and I was servicing the Anaconda Smelter in Anaconda, Montana, and [31] two small fabricating shops in Billings, Montana; the Lucky Friday Mine in Mullan, Idaho; the Sunshine Mine in Kellogg, and I believe that was it.

Q Prior to 1970, were you involved in negotiating any contracts on behalf of the fabricating shops in Billings?

A Yes.

Q These fabricating shops; is that a mechanical fabrication?

A Yes.

Q Of processed material?

A Yes.

Q The Anaconda function, in Anaconda, Montana; what kind of—

A It is a smelter.

Q Prior to 1970, had you been involved in negotiating any aspects of the health and safety for the fabricating shops, in Billings, Montana?

MR. COHEN: I am going to object to the relevancy.

A I don't remember.

Q (By Mr. Howard) Do you know if you had been in contact with the Health and Safety Department back in Pittsburg on behalf of the fabricating shops in Billings?

A Not that I can remember, no.

Q Did the fabricating shops in Billings, did they have a written contract?

[32] A Yes.

Q Did that also contain provisions relating to health and safety?

A I'm sure it did.

Q Did you have someone on your staff, or accessible to you, who you considered an expert in fabricating shop safety?

A No.

Q The functions at Sunshine that the Steelworkers represented, the workers—let me start all over again.

In your representation of the workers at Sunshine, did you represent only miners?

A No.

Q What others?

MR. COHEN: What year?

MR. HOWARD: In 1967.

A. We did not have the clerical unit in 1967.

Q 1970 you had the clerical unit?

A Yes.

Q You also had the mining unit?

A Yes.

Q They were two Local Unions, were they?

A Yes.

Q Any other functions there at Sunshine?

MR. COHEN: How do you mean, any other functions?

[33] Q (By Mr. Howard) Were there any other Locals?

Mr. COHEN: Do you mean job descriptions of the work performance, other than the mining work or office/clerical work?

A Somewhere in 1970 we organized a garnet mine that was part of the Sunshine Mine property, and they were also a part of Local 5089.

Q (By Mr. Howard) That was, again, a mining function?

A Yes, however, it was not a deep mine. It was a dredge operation.

Q When you say dredge operation, that is essentially a surface operation?

A Yes.

Q In the 1970 negotiations, you have indicated you were essentially the spokesman for the Union representation in the meeting with the mining personnel; is that right?

A Yes.

Q Did you also kind of quarterback the presentations of the Union?

A Yes.

Q Do you remember inquiring into the negotiations for the 1970 contracts with the Local Unions, whether or not they had any specific problems or recommendations with regard to health and safety?

MR. COHEN: I am going to object to the form of that [34] question. His testimony has been the Local Union meetings were the source of the rank and file input as to what the objectives would normally be. Your question pre-supposes the opposite.

Q (By Mr. Howard) My question inquires as to whether or not he asked specifically. Did you ask?

A We asked the membership if they had any recommendations and changes for the agreement, not specifically safety.

Q That would have been an inquiry that you made at a Union meeting of the Local Union?

A I or the president of the Local Union.

Q Do you remember being present at any meeting where inquiries were made of the membership as to recommendations that they may have?

A I don't remember. I was usually at all Union meetings, but I don't recall specifically. I would have to go back and check, but I don't recall. I am sure I was there; I feel sure.

Q Mr. Marshall, did you attend—I think you indicated already you attended most of the Union meetings preceding that negotiations?

A Yes.

Q That is just one of your job functions, is to attend those Local meetings?

A Yes, once a month.

[35] Q Prior to May 2 of 1972, do you recall conversations at local meetings for the Sunshine Miners where safety was discussed by the miners?

A I am sure there was discussion at the Union meetings, yes.

Q As a matter of fact, mine safety is one of their primary interests; isn't it? It came up quite often prior to May 2, 1972?

A Well, I wouldn't say it comes up quite often. It is certainly one of the things that is a function of the Local Union, by the Safety Committee giving their reports, yes.

Q Do you recall discussions where miners, individual members of the Union, whe were not on the Committee, would express their concerns from the floor?

A Yes.

Q What sort of procedure was formed within the Local Union, if you know, to handle those comments that were made from the floor?

A Generally, it depends on who the question was directed to. If it was directed to the chairman of the Safety Committee, then he would answer it. If it was directed to the President of the Local Union, he would answer it. If it was directed to me, I would answer it. It depends on the type of question that was asked at that particular time.

[36] Prior to May 2, 1972, were you involved in any discussions with any representative from the International Union concerning setting up a training program for miners at Sunshine, mine safety training?

A I need for you to clarify that, because I am not sure what you mean by training.

Q Well, training is a broad category, and I am talking about it in its broadest form. Did you have any discussions concerning mine safety and the training of

miners in mine safety, with anybody from the International?

A No.

Q You hesitated in answering, because apparently there is something there that was nagging you. Could you tell me what you are thinking?

A When we would have a training session, usually the Bureau of Mines, U. S. Bureau of Mines, or the State Mine Inspector's office would conduct safety first aid training, and that sort of thing. We utilized that as the training for first aid and so on.

Q Do you recall at any time prior to May 2, 1972, having any time period where you sat down and conferred, either you or in conjunction with somebody else in the International Local, consider the adequacy of mine safety at the Sunshine?

A We sat down many times and discussed mine safety, [37] because of the new Metallic and Nonmetallic Mine Safety Act that was enacted in the federal government, and discussed the action of the Bureau of Mines, how they were involved in it.

Q And this was prior to May 2, 1972?

A Yes.

Q When you say you sat down many times and had those kinds of discussions, was there a specific format where you would do that? Was this at a meeting of specific individuals or—

A We had, and I don't recall the dates, it just escapes me, but we did have meetings with the Bureau of Mines, or a meeting with the Bureau of Mines, to discuss their function of how they would operate in the mines of the Coeur d'Alenes.

Q Do you know in what year that was?

A I think it was probably in early 1972, or '71 era, or '70. I just dont recall the exact time.

Q Do you remember ever receiving any advisory bulletins from any state or federal agencies concerning

certain aspects of mine safety, and the proper function of a mine?

A Are you talking about reports?

Q Reports or bulletins.

A We would receive the updated Nonmetallic Mine Safety Act reports, coming from the government, yes. [38] Q When did you first start receiving those?

A I think when the law was enacted.

Q In 1967?

A I think it was enacted in '67, I'm not sure of the date on that; I am really not.

Q Do you remember any other types of correspondence that you would receive, other than these bulletins?

A No.

Q Did you maintain those bulletins in some file in your office?

A No.

Q Did you read them and review them upon receipt?

A Oh, I'm sure I did.

Q But you didn't keep them for future reference or anything like that?

A No.

Q Did you ever make an inquiry of the Health and Safety Department in Pittsburg as to availability of material to educate you on mining safety?

A No.

Q Did the International, through the Health and Safety Department, or any other representatives, ever provide you with any kind of written material on mining safety?

A They could have, but I don't recall.

Q I take it you would not have retained that as a [39] permanent record or reference material or anything like that?

A No.

Q If you were given something, you would have looked at it and thrown it away if you had it at all?

A Probably if I could use it I would use it. If I couldn't, I would just throw it away.

MR. COHEN: You have asked us to produce in connection with the Grimes and Schwartz depositions which you have noted for next week, any materials which went from Pittsburg to the Local Unions directly, or through the staff representative, and we will respond to that request and provide you those materials.

MR. HOWARD: I am just asking him for what recall he may have.

A I just don't recall.

Q (By Mr. Howard) Did the United Steelworkers in 1967 through 1972, anytime during that era, have some aspects of its organization kept up to date on developing technology and mine safety, that you know of?

MR. COHEN: If you know.

A I really don't know. I have no idea.

Q (By Mr. Howard) What did the Health and Safety Department do in Pittsburg, if you know?

A You should ask them. I don't know. They give advice when I would ask them, and you know, is that sort of [40] thing but—set up conferences.

Q I know you had very little contact with them, but who would you contact with the Health and Safety Department in Pittsburg in the 1967-72 era?

A I would go through the subdistrict director and through the director, and to the department head. I wouldn't go directly.

Q So you don't know any of the names of any individuals there?

A Yes.

Q What names are you familiar with?

A In the 1970's and just prior to that, Paul Shrimp was the director. He was in Kellogg upon invitation one time to speak to the Local Union. Adolf Schwartz after that was the director and I met him at the same time that they were in Kellogg.

Q Was that prior to May 2, 1972?

A Yes.

* * * *

[53] Q (By Mr. Howard) I think I have an understanding of what you are telling me, Mr. Marshall. Let us go back for a moment to this type of hypothetical, where we have now developed a union, and elected our officers, and they have appointed the Safety Committee that is identified in the Constitution, which is Exhibit 1.

A Okay.

Q Is that committee, which is identified in Section 10 of Exhibit 1 that you read, the same committee that we referred to as the Joint Committee at Sunshine?

A Yes.

Q There weren't two separate committees here?

A No.

* * * *

[54] Q (By Mr. Howard) If it will help, let me go after it in a different way. The obligation under the Constitution to formulate a Safety and Health Committee, that was satisfied I take it by the Joint, by the formulation of the Joint Safety and Health Committee at Sunshine; is that correct?

A Yes.

MR. COHEN: Union representatives of the Joint Safety and Health Committee.

Q (By Mr. Howard) I just want to make sure that we weren't talking about different committees, that there were two Union committees within the Union, other than the representation on the Joint Committee.

MS. CLARK: Actually, as a theoretical matter, there are two separate committees. They function—the Union members on the Joint Health and Safety Committe are also the Union Health and Safety Committee.

Q (By Mr. Howard) I am not interested in theory at [55] this point. I am interested in what happened in determining those procedures in the 1970-1972 era. They were one and the same, these committees. Let me ask, were the same three people who constituted the Local Union 5089 Safety and Health Committee, if you know, were those same people, the three or four, the Union representatives?

MR. COHEN: On the Joint Safety and Health Committee.

A Yes, they were.

Q (By Mr. Howard) And inspections that they did were done all at the same time?

A Right.

Q They weren't separate inspections where the Union did it on their own behalf, and then they did it on behalf of the Joint Committee?

A No.

Q Now, we have our theoretical Union, hardrock mine union, that we have developed, and we have developed the safety committee, and they are made aware of the Constitution that requires their performance. Do you know of any information by way of guidance that is available from the International department, as to what they should be looking for when they perform these reviews of the underground areas?

MR. COHEN: Time frame?

Q (By Mr. Howard) 1970 to '72 era.

A First of all, the committee itself is appointed by [56] the President of the Local Union. He would look at the membership, because they are miners. These people are hired out as miners, and helpers, and so on in the mine. That is their primary job. Their secondary job, of course, is assisting the union because we are the bargaining agent; okay?

Q Okay.

A Through their knowledge of working in the mine, they know whether an operation is safe or unsafe. They know it better than anybody else, because they work there.

Q Because they are miners?

A That is right, because they work there. They can understand if they are going to have a rock burst, or a problem within the mine. They understand that. So to give them any other training in safety, they are really the experts in and of themselves.

Q I take it then your answer to my question is there were no other forms of guidance provided?

A To my knowledge, that is right.

Q And you relied upon the experience of the people who were already there when you formed this political union that we just formed.

* * * *

[57] Q (By Mr. Howard) The aspect of safety, I take it then from your point of view as a staff representative, is that it is provided by the people who were working on the jobsite?

* * * *

A When an individual in the mine is appointed to the Safety Committee, he is now acting on the committee in behalf of the Local Union. The other tools which he may need are communications, both with management and with the Local Union officers. If there is a problem that he sees, then he has an [58] avenue to go in with the Joint Committee to take care of that. Again, if he has a problem, he will contact the proper people. We, myself, would contact, or the Local Union President, would contact the state and federal mine inspectors to try to remedy the problem that he may see. He sees this safety problem. He has an avenue to take care of it.

That is how we handle the safety problems, and that is how we have handled it.

Q (By Mr. Howard) But in terms of somebody on the Safety Committee recognizing the problem, you are relying on the workers who are locally there at the worksite?

A Yes, they see it.

Q But you are relying on them to recognize these problems?

A Oh yes, absolutely.

Q And I mean there are no inspectors that are provided by the International from home office, that inspect the mines are there?

A No.

* * * *

ORAL DEPOSITION OF ADOLPH SCHWARTZ
TAKEN JULY 12, 1983

* * * *

[46] A Well, at the William Penn Hotel, those began in August of '69, and they dealt primarily with the pending OSHA legislation. We set forth the procedures that we thought they should follow to assist the international officers and directors in securing passage of the Occupational Safety and Health Act.

In addition, the program—I don't know what exhibit it is, that other one.

MR. COHEN: The blue book?

THE WITNESS: Yeah, that one.

A It wasn't even the blue book then. It was just a stapled together document. We went through and explained to them what I had done, as a coordinator for District 29, and what we recommended they do in order to help the folks at the local unions.

Q These seminars or programs at the William Penn Hotel—whatever you want to call them—who was that information provided to?

A The coordinators.

Q The safety coordinators for the districts and subdistricts?

A Right.

Q In the Coeur d'Alene mining district—

[60] Q Do you know who the author was of Exhibit No. 1?

A I was.

* * * *

[82] Q Under Article XIV, on Page 37, let me direct your attention to that article. Does that bylaw require anything of the local union?

A Say that again, please.

Q Does that bylaw that I'm directing your attention to require anything of the local union?

A Yeah. It's a bylaw of a local union.

Q What does it require the local union to do with regard to safety?

MR. COHEN: Under Section 1 it states, "A Workmen's Compensation Committee and a Safety and Health Committee, under the direction of the International Union or its designated representative, shall be established in the local union."

THE WITNESS: The end of Section 1.

* * * *

[84] Q My questions are relating to the connection between the bylaws and the section that you just read and the connection, if any, with the recommendations that are in Exhibit No. 1.

[85] As I read the bylaws, the local safety and health committees are formed under the direction of the international, and I'm wondering—

A Or its designated representative.

* * * *

Q And is that recommended procedure something that you directed to the local unions?

A Well, first of all, I think we should understand that we in the Safety and Health Department do not exercise direction, and you're formulating the question—direction comes from the international officers and the International Executive Board.

We recommend; we suggest. We put together a program [86] like that. We explain it time and time again. But the Safety and Health Department does not have the authority to recommend—or direct anybody and say this is what you have to do.

Q All right.

A That's not our prerogative. I believe it comes under the direction of the international president and the board and our convention action.

Q Do you know if any of the officers of the international ever supplied any direction to the local unions that they adopt your recommended safety and health program, which is Exhibit No. 1?

* * * *

[87] A The president—the best I can do in that respect, President Abel's remarks at our first and second safety and health conferences are there, and they're recorded verbatim, and I haven't—

Q Are they in one of these exhibits?

• • • •

A Both of them are here.

• • • •

Q Mr. Schwartz, we've had marked now as Exhibit No. 7 a document which consists of a number of different pages.

[88] Would you identify that for the record.

A Okay. This is a statement by President I. W. Abel of the United Steelworkers of America that was made at our first International Safety and Health Conference in November of 1969.

In addition thereto, there's also a statement by Marco Vestich to the conference. There is also a statement by Mr. Ben Fischer, director of the contract administration department, United Steelworkers of America, a rather wordy gentleman.

A statement by Thomas F. Mancuso, M.D., from the University of Pittsburgh, to the conference. A statement by Dr. Hawey A. Wells, Professor of Pathology, University of West Virginia.

• • • •

[89] Q Mr. Schwartz, let me show you what has been marked as Exhibit No. 8, and that's a single document consisting of a number of pages. What is that?

A These are speeches, statements, whatever you want to call them, by all of the people set forth in the index.

Q All right. And those statements apparently were made at your international—

A Second International Safety and Health Conference in May of '71, it's marked Exhibit 8.

Q Exhibit No. 7, the series of documents that you identified in Exhibit No. 7, are those a summary of the

statements made by the individuals indentified or a verbatim transcript?

A They're verbatim transcripts.

Q And when were those statements made? Do you know?

A In Exihbit 7?

Q Yes.

A They were made in November of 1969, at our first [90] safety and health conference in Chicago.

Q Now, these are the two documents that you were referring to earlier when we were talking about whether or not President Abel ever directed the locals to adopt the recommended procedures or program. That's marked as Exhibit No. 1; is that correct?

A That's correct.

Q Other than these two documents, do you know of any other comments made by President Abel with regard to safety—or excuse me, with regard to adopting your recommended program?

A Not as it deals with the recommended program, Mr.—President Abel did much in testimony in Washington to secure passage of the Occupational Safety and Health Act.

All that, but not as concerns adopting the program set forth in Exhibits 1 and 2. To the best of my knowledge, whatever is in there is in there, but I haven't looked at it for some time.

• • • •

[91] Q In your interpretation of the bylaws and the constitution of your union, who had the authority to direct the local unions with regard to their safety and health committees?

• • • •

A Well, certainly, we don't have the authority to direct our district directors or the people out in the field. [92] That comes—that's formulated through the officers, through the International Executive Board, which is com-

posed of the district director and at that time through three top international officers.

• • • •

Q My question was who, if anybody, did have the authority to direct the local unions with regard to safety, pursuant to the bylaws that you have before you there?

A Well, keeping in mind what Mr. Cohen just said, I would respond in this fashion: That President Abel did and the district directors in the various districts did.

• • • •

EXHIBIT NO. 1 TO SCHWARTZ DEPOSITION

RECOMMENDED SAFETY AND HEALTH PROGRAM

UNITED STEELWORKERS OF AMERICA

• • •

AFL-CIO-CLC

• • •

International Safety and Health Department

INDEX

STATEMENT BY INTERNATIONAL SAFETY AND HEALTH DEPARTMENT

Section 1—Objective and Obligation of the Parties ..... [134]

Section 2—Joint Union-Company Safety and Health Committee ..... [135]

Section 3—Joint Union and Company Safety and Health Committee Meetings ..... [138]

Section 4—Special Safety Meetings ..... [139]

Section 5—Board of Inquiry ..... [139]

Section 6—Quarterly Review ..... [140]

Section 7—Minutes of Safety and Health Meetings ..... [141]

Section 8—Plant Inspections ..... [142]

Section 9—Safety and Health Recommendations ..... [144]

Section 10—Protective Devices, Wearing Apparel and Equipment, Heating and Ventilation ..... [145]

Section 11—New Apparel ..... [146]

Section 12—New Work Processes ..... [146]

Section 13—Chemicals, Solvents and Compounds ..... [147]

Section 14—Government Reports ..... [148]

Section 15—Safety Talk Program ..... [149]

Section 16—First Aid Reports and Ambulance Calls ... [149]

Section 17—Safety and Health Disputes ..... [150]

Section 18—Safety Grievances ..... [152]

Section 19—Union Safety Chairman Grievance Rights.. [152]

Section 20—Safety Education and Training ..... [153]

Section 21—Permissible Noise Exposures ..... [154]

Section 22—Working Alone ..... [154]

Conclusion ..... [155]

OBJECTIVES

The International Safety and Health Department sets forth two objectives in this document:

First, it recommends contractual language to be negotiated into all of the contracts under the jurisdiction of the United Steelworkers of America. Second, the Departments states the objective of the International Safety and Health Department is to set forth the reasons why the contractual recommendations are made. The Department will provide advice and counsel to Local Union negotiating committees when they are faced with negotiating the recommended Safety and Health Program into their agreements.

This recommended program is a comprehensive one. It is designed so it can be applied, workably, to the largest and to the smallest Local Unions of the USWA.

There are approximately 3,600 Local Unions in the United Steelworkers of America. There are some amalgamated Local Unions which have more than one contract under their jurisdiction.

The jurisdiction of the USWA includes such industries as basic steel, can, aluminum, fabrication, warehouses, mining, ships on the Great Lakes, etc.

The USWA includes members in the United States, Canada, Hawaii, Puerto Rico and the Virgin Islands.

Therefore, the job of preparing a standard Safety and Health Program to be adopted where appropriate is a formidable one. It is the judgment of the Department that the recommended program can be *tailored* to the needs of any Local Union.

There are some excellent Safety and Health Programs already in existence in some of our Local Unions. However, too many of our contracts are inadequate in the areas of safety and health.

Some of the features of the recommended Safety and Health Program may already be in your contracts. Take the parts of the program that best suit your needs or take all of it. This comprehensive program will do the job of protecting the safety and health of our membership.

The first section of the Safety and Health Program is recommended contractual language, designated with an "L". The section immediately following it states the reasons for the recommended contractual language, designated by the letter "R".

SECTION 1—(L)

OBJECTIVE AND OBLIGATIONS OF THE PARTIES

The Company and the Union shall cooperate in the continuing objective to eliminate accidents and health hazards. The Company shall make provisions for the safety and health of its employees during the hours of their employment.

SECTION 1—(R)

It is most important that the Industrial Safety and Health Program be a *joint* program, where the responsibilities and obligations of the parties are equally shared. In the event either party assumes more than half of the obligations, the entire program becomes unbalanced and most certainly will not function. This is why we stress under "Objective and Obligations of the Parties" that both the Union and the Company cooperate in the continuing obligation to eliminate accidents and health hazards.

SECTION 2-A—(L)—1200 OR MORE

JOINT UNION-COMPANY SAFETY AND HEALTH COMMITTEE

The Company and Union shall establish a Joint Safety and Health Committee. The union members should be the Union Safety Committee Chairman, and an agreed number of safety committeemen. The Company shall have an equal number of management representatives.

The Company shall notify the Union by letter of the designated representatives of the Company's Safety and Health Committee.

The Union shall notify the Company by letter of the designated representatives of the Union's Safety and Health Committee. The Union Committee will cooperate with Management to develop a Safety and Health Program, designed to prevent accidents and health hazards.

The Union Safety Chairman or any member of the Safety Committee will have access to all areas within the jurisdiction of the Local Union at any time of the day or night after proper notification to the Plant Protection Patrolman, at the area he is entering.

Members of the Union Safety Committee shall be afforded time off to transact any legitimate matters pertaining to safety, such as accident investigations, meetings, etc., after proper notice to his supervisor.

SECTION 2-A—(R)—1200 OR MORE

The International Safety and Health Department is recommending three types of Local Union Safety and Health Committees which will best serve the needs of our membership. First, the Safety Department will address itself to Section 2-A and to Local Unions with a membership of 1,200 or more.

The Committee Chairman should serve on a full-time basis, responsible only to the President of the Local Union, and his wages shall be paid by the Company. It shall be the function of the Chairman to see that all of the features of the Safety and Health Program are adhered to by our members and the Company.

It is necessary that access to company property during any hour of the day or night is readily available to the Safety Chairman, and to the Local Union Safety Committeemen. This must be by contractual right. It is recommended that the Safety and Health Program be separated from the grievance procedure.

It is recommended that all members at all levels of the Local Union Committee be appointed by and work directly under the President of a Local Union.

In Local Unions where the past practice has been to elect all members of the Safety and Health Committee, no change is recomended.

The wages for the Union Safety Chairman should be negotiated between the Local Union and the respective company.

It shall be the responsibility of the Chairman of the Committee to notify their district safety coordinator and the International Union Safety and Health Department of the names, addresses and telephone numbers of the members of the Local Union Safety and Health Committee.

SECTION 2-B—(L)

UNION SAFETY COMMITTEE—Unions with 200 to 1200 members

There shall be an agreed number of Safety and Health Committeemen from the bargaining unit, one of whom shall serve as Chairman. There shall be an agreed

number of Committee members representing the Company. The Committeemen for the union and the Company may be expanded by mutual agreement.

SECTION 2-B—(R)—200 TO 1200 MEMBERS

It is recommended that Committee members come from various areas in the plant, and that they represent both production and maintenance employees.

It is recommended that the Union Safety Chairman be permitted to work the turn or shift which makes him most available to his membership. It is recommended that the Union Safety Committee be divorced from the grievance committee.

It shall be the responsibility of the Committee Chairman to notify the respective district safety and health coordinator and the International Union Safety and Health Department of the names, addresses and telephone numbers of the Local Union Safety Committee.

SECTION 2-C—(L)

SMALL PLANTS—Unions with 200 or less members

There shall be an agreed number of Safety and Health Committee members who may be officers of the Local Union, one of whom shall serve as Chairman. There shall be an agreed number of Safety and Health Committee members who shall be representatives of management. The Committee may be expanded, both Management and Union, by mutual agreement.

SECTION 2-C—(R)

It is recommended in small plants that officers and members of the Local Union's Executive Board may also act as members of the Committee, if others are unavailable. (Experience has taught us that in small plants it is often difficult to get anybody except the Local Union Officers to participate in the affairs of the Local Union.)

SECTION 3—(L)

JOINT UNION-COMPANY SAFETY AND HEALTH COMMITTEE MEETINGS

The Joint Safety and Health Committee shall meet regularly and take up such safety and health complaints as may be brought forth by either the union or the company safety committees. Each committee shall advise the other committee sufficiently in advance of the meeting what items it wishes to discuss.

SECTION 3—(R)

It is strongly urged that all union and company safety and health committee meetings be held on a weekly basis. These should be regularly scheduled meetings. There should be no postponements or discontinuance of these weekly meetings unless other meetings of the utmost concern to the parties warrant it. These weekly meetings are the beginning of the establishment of line of communication between the union and the company that must be maintained at all times.

Advance information on the agenda will prevent the company from claiming it is not prepared to discuss items on the agenda, and will prevent the company from asking for more time before it considers a particular item.

We do not mean to imply that something of an urgent nature cannot be taken up in these meetings without prior notification. As much as possible, a prepared agenda should be exchanged by the parties at an appropriate time prior to these regularly scheduled weekly meetings of the joint company and union committees.

SECTION 4—(L)

SPECIAL SAFETY MEETINGS

Special safety meetings may be requested by the Company Safety Director or the Union Safety Chairman. Such meetings shall be held at a mutually satisfactory time.

SECTION 4—(R)

No matter how many sections are written in any particular safety and health article, no matter how many people are involved in the administration of the safety and health program, situations arise from time to time that require immediate consideration, and action. Therefore, all local unions must have a provision for special safety meetings.

SECTION 5—(L)

BOARD OF INQUIRY

A Board of Inquiry consisting of the Company Safety Director and two (2) other representatives designated by the company, together with the Union Safety Chairman, and two other representatives designated by the Union shall be convened and shall investigate all accidents involving fatalities, disabling injuries, extended loss of time by an employee or such other serious situation as merits investigation in the opinion of the company or the union.

The Board of Inquiry shall make on-the-spot investigations, hear witnesses and examine records as required in the opinion of the company or union to determine the causes of the accident and any remedial or preventive action.

The Board of Inquiry shall be held as soon as possible, but not later than three (3) days after the incident or accident occurs.

SECTION 5—(R)

When an accident does occur, it should be investigated as set forth in this Section, and the objective of the investigation should be to prevent the recurrence of similar accidents.

The minutes of the Board of Inquiry meetings shall be submitted to the Joint Safety Committee for review.

SECTION 6—(L)

QUARTERLY REVIEW

The Union Safety Committee will meet jointly with the Company Safety Committee every three (3) months. The purpose of this meeting will be to review and evaluate all aspects of the safety program in conformity with the agenda agreed by the members of the Joint Committee. The agenda should include the Plant Inspection Reports. (see Section 8)

SECTION 6—(R)

The purpose of the Agenda is to insure that all of the provisions of the Safety and Health Program will be thoroughly reviewed every three (3) months.

The suggested Agenda should include the following:

QUARTERLY REVIEW—Suggested Agenda

SUBJECT

BOARD OF INQUIRY REPORTS
FIRST AID CASES
NATURE OF LOST TIME INJURIES
TYPES OF ACCIDENTS
CLASSIFICATION OF INJURIES
SAFETY STATISTICS
LOST TIME INJURY BOARDS
SAFETY RECOMMENDATIONS
HOUSEKEEPING SUMMARY
NOISE EXPOSURES
UNSAFE CONDITIONS SUMMARY
TEMPORARY WIRING
LIGHTING
SANITARY FACILITIES
RESTAURANTS
CRANE INSPECTION
RAILROAD VEHICLES
RUBBER WHEELED VEHICLES
IN PLANT AIR POLLUTION

TRACKED VEHICLES (Bulldozers, etc.)
SAFETY TALK CONTACTS
UNSAFE PRACTICES
HOLD CARDS
RESPIRATORY EQUIPMENT
FIRE EQUIPMENT
EMERGENCY INJURY EQUIPMENT
PERSONAL PROTECTIVE EQUIPMENT
NEW EQUIPMENT AND PROCESSES
HEAT AND VENTILATION
AIR AND WATER POLLUTION
WARNING DEVICES
SPEED CONTROL
X-RAY PROTECTION
FIRST AID STATIONS
USAGE OF CHEMICALS
GASES, ETC.
MUTUAL COOPERATION
GENERAL DISCUSSION

SECTION 7—(L)

MINUTES OF SAFETY MEETING

Minutes of all Safety and Health meetings between the Company and the Union shall be prepared by the Company.

Copies of the minutes shall be mailed to the Staff Representative, Local Union President and Union Safety Chairman within ten (10) days (excluding Saturdays, Sundays and holidays) after the date on which the meeting was held.

If the Union Safety Chairman shall disagree with the accuracy of the minutes as prepared by the Company, he shall set forth his reasons for such disagreement in a letter to the Company, and the minutes except for said disagreement shall be regarded as satisfactory.

Minutes shall conform to the following outline:

(1) Date and place of meeting.

(2) Names and positions of those present.

(3) Description of each Safety and Health subject discussed.

(4) Statement of Union position.

(5) Statement of Company position.

(6) Summary of discussion.

(7) Decision reached, if any.

SECTION 7—(R)

All minutes of all meetings relating to safety and health are a wonderful source of information for all local unions immediately prior to the commencement of negotiations. Particular problems in your local union will clearly be reflected in the minutes, and there will be justification for changes in the Safety and Health Program where needed.

SECTION 8—(L)

PLANT INSPECTIONS

The Joint Safety and Health Committee shall regularly inspect the plant to observe the housekeeping in the plant, and to observe unsafe conditions or practices in the following areas:

1. Temporary Wiring
2. Plant Lighting
3. Sanitary Facilities (Toilets, Showers, Wash Rooms, Locker Rooms, etc.)
4. Restaurants and Lunch Rooms
5. Overhead Cranes
6. Railroad Vehicles—Engines—Cars—Cranes
7. Rubber Wheeled Vehicles—Trucks—Hi-Lows, etc.
8. Tracked Vehicles—Bulldozers—Crawler Cranes
9. Hold Cords—Ask employees, while on inspection

10. Respiratory Equipment
11. Fine Equipment
12. Emergency Injury Equipment—Ambulance, Stretchers, Blankets, etc.
13. Personal Protective Equipment—Hard Hats, Safety Glasses, Shoes, Wristlets, etc. Hot Metal areas, Acid areas, etc.
14. Heating and Ventilation
15. Air and Water Pollution
16. Warning Devices—Bells, Whistles—Horns—Flooding Lights, etc.
17. Speed Control—Larger Plants—Outside Contractors—Salesmen—Trucks
18. X-Ray Badges—Check employees working in exposure areas.
19. First Aid Stations—Check them for proper equipment and medication
20. Usage of Chemicals—Solvents—Compounds—Excessive Dust—Fumes—Gas
21. Check all tools and equipment our members are using in the performance of their job duties—through the plant.

A written report of the inspections by the Joint Safety and Health Committee shall be compiled, special attention shall be given to repeat items, and one copy of the report is to be furnished to the Safety Committee, Staff Representative, and District Coordinator.

SECTION 8—(R)

The features of Section 8, Plant Inspection, cannot be over-emphasized. It is suggested that after Section 8 has been complied with, then the features of Section 3 be complied with. In this way, the views of the Joint Safety Committee will be in writing, and made a part of the minutes. The value of plant inspection is that the com-

pany cannot say it did not know that certain conditions existed. By having a joint committee and by making a joint plant inspection, it will be easy to determine whether the items observed, by either party, falls within the jurisdiction of the Safety and Health Program.

SECTION 9—(L)

SAFETY AND HEALTH RECOMMENDATIONS

Safety recommendations of the Union Safety Committee, submitted by the Chairman, shall be reduced to writing on forms provided by the company, or the International Union—Form #263, and filed in duplicate with the Company's Safety Director who shall number the recommendation and note thereon the date it was received. A copy of the recommendation shall be sent to the President of the Local Union. The safety recommendation shall be reviewed by the Union Safety Chairman and the Company Safety Director at the time the recommendation is filed.

The Company Safety Director will answer and code the safety recommendation as promptly as possible; but, not later than seven (7) days, excluding Saturdays, Sundays and holidays, from the date of filing. Copies of such answer will be furnished to the Union Safety Chairman, the President of the Local Union and the Staff Representative of the International Union.

If the recommendation is granted, the company will endorse a tentative completion date on the recommendation. Upon the completion of the recommendation, a notice will be furnished to the Union Safety Chairman, the President of the Local Union and the Staff Representative. If the recommendation is denied by the Company, it may be made the subject of a grievance and processed under Section 18 (L).

SECTION 9—(R)

The International Form #263 is for the filing of Safety and Health recommendations with the company.

This is not to suggest that all other steps or features of the safety program should not be utilized to the fullest. However, from time to time it becomes necessary to reduce to writing a safety recommendation, after various other parts of the Safety and Health Program have failed to produce the desired results. The filing of Form #263, to a degree, is a counterpart to a grievance in that it sets forth the recommended corrective action.

This form should be graded, using an agreed method, and then should be kept active until the union safety committee is notified that the recommended corrective action has been completed.

The provisions of this section should be utilized between periodic meetings of the Joint Committee.

In the event there is disagreement between the union and the company safety committee as to the merit of the safety recommendation on Form #263, the special meeting referred to in Section 4 should be utilized.

In any event, with the filing of a safety recommendation on Form #263, the company will be on notice that an unsafe condition or a hazard exists, and if they truly believe in the provisions of Section 1, they will correct the unsafe condition or hazard. If a company denies a valid safety recommendation it knows it runs the risk of a fatal or a serious accident resulting from such a denial.

SECTION 10—(L)

PROTECTIVE DEVICES, WEARING APPAREL, —EQUIPMENT, HEAT AND VENTILATION

Protective devices, wearing apparel and other equipment necessary to properly protect employees from injury shall be provided by the Company in accordance with practices now prevailing.

Protective devices, wearing apparel and equipment shall be mutually agreed upon and listed in a safety book, and shall be revised and brought up-to-date twice

each year by the parties. The Company shall make reasonable provisions for the proper cleaning and maintenance of all safety equipment.

Proper heating and ventilating systems shall be installed and maintained.

SECTION 10—(R)

Protective devices, wearing apparel and other safety equipment necessary to the job should be listed in a safety book and up-dated periodically.

SECTION 11—(L)

NEW APPAREL

When the company introduces new personal protective apparel, or extends the use of protective apparel to new areas, or issues new rules relating to the use of protective apparel, the matter will be discussed with the members of the Safety Committee in advance, with the objective of increased cooperation.

SECTION 11—(R)

In these days of constant changing technology, new apparel is introduced often. Therefore, union safety committee members should be involved constantly in the checking of new apparel, to see that it best serves the needs of our members.

When new protective devices or wearing apparel is introduced by the company, it should be set forth in the safety book referred to in Section 10.

SECTION 12—(L)

NEW WORK PROCESSES

The company shall notify the Chairman of the Union Safety Committee prior to the time new machinery or new work processes are put into use to help protect the safety and health of the employees.

Compliance with this Section is to insure maximum cooperation in the prevention of accidents. The objective is

not to obtain the approval of the union to put the changes into effect.

SECTION 12—(R)

Due to constant changes in technology, new work processes are almost a daily occurrence in most of our plants, large or small; therefore, it is of utmost importance that when new work processes are introduced by the company, the union safety committee be made aware of such new work processes so that they investigate them, check them, and make a determination as it relates to safety and health, seeing to it that the best interest of our membership is protected.

SECTION 13—(L)

CHEMICALS, SOLVENTS AND COMPOUNDS

Where the company is currently using chemicals, solvents and compounds or when new chemicals, solvents or compounds, etc. are to be introduced, the Company shall inform the Safety Chairman what hazards, if any, are involved and what precautions are taken to insure the safety and health of the employees. The company shall supply documentary evidence to this effect.

SECTION 13—(R)

Since the turn of the century more than 500,000 new chemicals, solvents and compounds have been introduced in industry. The ravages relating to health that some of these chemicals, solvents and compounds have caused is just beginning to be recognized and felt by employees.

Usually the effects from chemicals, solvents and compounds have a fairly long range effect. Sometimes, from 10 to 15 years. In some cases, once the employee becomes ill from some of the chemicals, solvents and compounds, there is nothing that can be done to save his life.

On June 4th and 5th, 1969, in Washington, D.C., at the first Industrial Union Department Safety and Health Conference, highly qualified members of the medical profession set forth terrifying examples of what happened to

people in industry who work with asbestos, coal, beryllium and teflon, etc., and, in all cases, once the cause of illness was discovered, it was too late to do anything for the people who had contacted these industrial diseases.

Every effort should be made to negotiate sound, practical, workable language which guarantees our members the fullest protection against any possible effects from chemicals, solvents and compounds. Smaller companies which may not have laboratories can utilize the services of federal, state, county or city services.

SECTION 14—(L)

GOVERNMENT REPORTS

In the event the federal, state, county or city government conducts an inspection or a test in a plant, either routine or at the request of the union or an individual member or the company, the results of such an inspection or test shall be made known to the Local Union and to the International Union in the same form as is furnished to the company by the federal, state, county or city government.

SECTION 14—(R)

It is commonplace in most states that various inspectors inspect industrial plants. The arrival of the inspector at the plant, the inspection conducted, and the results determined are not made known to the Union's Safety and Health Committee. It must be clearly set forth in the contract that these reports from the various governmental agencies must be furnished to the Union.

The cloak of secrecy must be removed from this area of government inspections. If the inspections reveal nothing detrimental to the safety and health of our members, then this should be made known. If the inspections reveal something that is detrimental to the safety or health of our members, then this, too, should be made known.

SECTION 15—(L)

SAFETY TALK PROGRAM

A Safety Talk Program shall be established which shall provide at least one (1) safety talk to the employees per week. This program is to be administered by the Company through the foremen or other safety representatives of the company. In addition, all new employees hired by the Company shall be given an orientation on the Safety and Health Program.

SECTION 15—(R)

The Safety Talk Program is a method of communication between the employee and his immediate supervisor on matters relating to safety and health.

We have already stressed the importance of communication relating to safety and health. It is suggested that one-half of the safety talk deal with general items relating to Industrial Safety and Health. The second half of the talk shall deal with the employee; his job, his department, and/or immediate work area.

The minutes of Board of Inquiry Meetings (Refer to Section 5) are an excellent source of material for safety talks.

It is strongly urged that all new employees be thoroughly indoctrinated in the area of Safety and Health before they begin work, so that they will not cause injury to themselves or their fellow workers.

SECTION 16—(L)

FIRST AID REPORTS AND AMBULANCE CALLS

The company will provide the union safety chairman with daily copies of first aid reports involving bargaining unit employees.

The company will notify the union safety chairman, and/or the appropriate union safety committeeman of ambulance calls involving bargaining unit employees of the company.

SECTION 16—(R)

The furnishing of first aid reports on a daily basis will enable the safety chairman to keep a running check on all types of injuries, and help him determine whether they warrant a Board of Inquiry investigation.

It will also enable the union safety chairman to see where particular injuries are taking place, and help him in the prevention of future accidents.

Notification of all ambulance calls will enable the Union Safety Chairman to get to the scene of an accident very quickly.

This is extremely important to a Board of Inquiry investigation because it will enable the safety chairman to observe the scene before anything has been disturbed.

SECTION 17—(L)

SAFETY COMPLAINTS AND DISPUTES

It is the intent of the parties that no employee shall be required to work under conditions which are unsafe or unhealthy beyond the normal hazard inherent in the operation in question, and that an employee who believes that he is being so required shall have the right to:

(1) Relief from the job without loss to his right to return to such job and at the Company's discretion, assignment to any other job at the rate of that job as may be available in the plant; provided, however, that no employee other than communicating the facts relating to the safety of the job, shall take any steps to prevent another employee from working on the job; or

(2) File a grievance in the third step of the grievance procedure and such grievance shall be given preferred attention; or

(3) a. Discuss it with his foreman in an attempt to settle the problem or complaint.

b. If such complaint or problem is not settled as the result of such discussion, a member of the union safety committee will be promptly notified by the foreman. The safety committeeman, the employee and the foreman will then discuss such complaint or problem in an attempt to resolve the matter.

c. If such complaint or problem is not settled as the result of such discussion it will be the responsibility of the foreman to notify the Company Safety Director and the Union Safety Chairman immediately.

d. The Company Safety Director and the Union Safety Chairman shall meet immediately with the involved parties to determine whether the employee was being required to work under conditions which were unsafe or unhealthy beyond the normal hazard inherent in the operation in question.

e. In the event the complaint or problem is not resolved as the result of such discussion, then the matter shall be promptly referred to the Board as constituted in the following sub-paragraph:

f. There shall be a Board consisting of six (6) members. The representatives of the Company shall be ----------. The representatives of the Union shall be the Staff Representative, the President of the Local Union and the Safety Chairman. The Board shall meet as soon as

possible to determine whether the employee was being required to work under conditions which were unsafe or unhealthy beyond the normal hazard inherent in the operation in question.

g. If the Board is unable to agree, then the matter shall be referred to immediate arbitration.

SECTION 18—(L)

SAFETY GRIEVANCES

Safety grievances shall be processed directly to the third step of the grievance procedure, and will be subject to arbitration. Such third step grievance meetings shall be attended by the Company Safety Director and/or his representatives, and designated representatives of Management, the President of the Local Union, the Chairman of the Grievance Committee, the Union Safety Chairman, a member of the Safety Committee, and Staff Representative of the International Union.

SECTION 18—(R)

This Section has already been referred to in other provisions for the filing of safety grievances, and it sets forth the procedure. This Section 18 should not be used as a crutch. All other featuures of the program should be utilized before a safety grievance is written.

In the event it is determined by the union's safety committee to utilize the grievance procedure, then it should be done; however, do not use this section to circumvent, in any manner, any of the provisions of this total safety program.

SECTION 19—(L)

UNION SAFETY CHAIRMAN GRIEVANCE RIGHTS

Notwithstanding the rights of the employee stated above, the Union Safety Chairman and/or the safety

committeeman shall have the right to utilize the grievance procedure as described above whenever, in their opinion, unsafe or unhealthy conditions exist, and the employee or employees involved do not file a grievance.

SECTION 19—(R)

The purpose of this Section is to give to the Union Safety Chairman a tool or a procedure which he can utilize in the event our members do not utilize the provisions of the safety and health program.

Therefore, it is the responsibility of the Union Safety and Health Chairman to see that complacency does not set in, and that we will not have to re-live the safety and health history of by-gone years.

SECTION 20—(L)

SAFETY EDUCATION AND TRAINING

The Company and the Union shall establish and maintain a sound, practical and workable Safety Education Training Program.

The Safety Education Training Program shall cover two (2) primary areas, and shall be governed by acceptable Safety methods and procedures.

The first area will provide for Safety Education and Training in general; programs such as Hard Hats, Eye Protection, Safety Shoes, Fire Prevention, etc.

The second area will provide for individual Safety Training of the employee. His job, his responsibilities, safety-wise, to himself and others, the equipment, tools and material he uses, Chemicals, Solvents, and Compounds, etc.

SECTION 20—(R)

To succeed, a Safety Education and Training Program must be understood and accepted by the people involved. They must understand that all of this effort is for their protection and welfare as well as their families; and, for the protection and welfare of their fellow workers and their families.

SECTION 21—(L)

PERMISSIBLE NOISE EXPOSURES

No employee shall be subject to sound levels exceeding the limits set out in Paragraph 50-20410 of the Safety and Health Standards for Federal Supply Contracts under the Walsh-Healey Act, or the Standards of any subsequent Federal State or Local Acts or Laws whichever are higher.

SECTION 21—(R)

It is recommended by the Department that all who are responsible for negotiating contracts, and all who are responsible for implementing and maintaining the Safety and Health Program in the Local Unions, make themselves thoroughly familiar with the provisions of Federal Register—Volume 34—Number 96—Tuesday, May 20, 1969, Washington, D. C.—Part II—Department of Labor—Safety and Health Standards (Walsh-Healey Standards), so they will be well equipped for the job and battle ahead, with the Companies, to secure the referred to standards.

SECTION 22—(L)

WORKING ALONE

No employee shall be required to work alone in any area beyond the observation of other persons.

SECTION 22—(R)

Recent fatal accidents sharply point out the need for the above section. In recent fatal accidents the investigation conducted to determine cause, to prevent re-occurrence, failed. The reason the investigation failed was, no witnesses; therefore, no statements or observations from witnesses, net result—nothing—except a dead Union Brother, and a grieving family and a saddened Local Union.

Had the above section been in the Contract and enforced by all Union personnel who are responsible for the maintenance of the Local Union's Safety and Health program the fatal accidents may have been avoided.

CONCLUSION

The Safety and Health Program as outlined, is comprehensive. It is *not* suggested that the exact language of the outline must be negotiated into each contract because of the differences in various manufacturing processes and the size of local unions.

It is recommended that prior to negotiations, all of the proposed sections and their explanations be carefully gone over to determine what best suits the individual needs of the members so that the best possible safety and health program can be provided.

After the drafting of a Safety and Health Program, and the presentation to the Company, it should be examined to see if it meets all requirements to handle all safety and health problems. This is the test that an effective and practical Safety and Health Program must meet.

IT MUST DO THE JOB

EXHIBIT NO. 2 TO SCHWARTZ DEPOSITION

USWA

SAFETY and HEALTH PROGRAM

ACCIDENT INVESTIGATION
MEETINGS AND REPORTS
JOBSITE INSPECTION
FIRST AID FACILITIES
GOVERNMENT INSPECTIONS
EDUCATON AND TRAINING
MANAGEMENT RESPONSIBILITY
UNION PARTICIPATION
ORGANIZATION

INTERNATIONAL SAFETY & HEALTH
DEPARTMENT
United Steelworkers of America
AFL-CIO-CLC

FOREWORD

This pamphlet on safety and health is one of the most important pamphlets ever published by our Union because nothing is of more concern to our Union than the safety and health of our members.

The United Steelworkers of America has pioneered in the field of occupational safety and health. In the United States, it played the leading role, for example, in winning Congressional approval in 1970 of the Occupational Health and Safety Act.

But the struggle against injury and death on the job involves more than the printing of pamphlets and the passage of legislation. It involves a sense of determination of all concerned to see that safety programs and legislation are effectively implemented.

Health and safety programs are going to be made or broken at the plant level, by how well our local unions and their safety and health committees do their job, and by the involvement of our individual members.

Also, the occupational health and safety laws in our two nations must be administered with zeal and a genuine concern to reduce death, injury and illness at the work place. This is in the highest national interest and our Union will insist upon that kind of administration of such laws, supported by adequate funding and staffing.

Let us all, then, pledge our energies to implementing not only the program outlined in this pamphlet but to fulfilling our responsibilities under the law so that our members will enjoy the safest and healthiest working conditions possible.

I. W. Abel,
International President

PURPOSE

Our Union, the United Steelworkers of America, has no greater responsibility than to protect the lives, limbs, and faculties of our membership from industrial accidents and from industrial diseases in the work place; to this responsibility, your Safety and Health Department dedicates itself.

This booklet originally titled "Recommended Safety and Health Program," has been revised to provide more definite recommended language for the Safety and Health provision in our agreements.

Since President Abel reorganized the Safety and Health Department in June, 1969, much experience has been gained by the Department. This was achieved through exposure to our membership at our International Safety and Health Conference, at District Conferences, at District and Sub-District Safety and Health Conferences, at Industry Conferences, and by going out into the field, as necessary, to assist local unions with special problems.

There are some excellent Safety and Health Programs already in existence in some of our local unions. However, too many of our contracts are inadequate in areas of safety and health.

Some of the features of the revised language in this booklet may already be in your contracts. Take the parts of the Program that best suits your needs, or take all of it. This comprehensive Program will do the job of protecting the safety and health of our membership.

It is the judgment of the Department that this revised Program can be tailored to the needs of any of our local unions.

Paul Schremp, *Director*
Adolph Schwartz
Marco Vestich
Francis Grimes

TABLE OF CONTENTS

Safety and Health Contract Language ..... [160]
Section 1—Objectives and Obligations of the Parties .. [160]
Section 2—Joint Union-Management Safety and Health Committee ..... [160]
Section 3—Plant Inspections ..... [161]
Section 4—Joint Union-Management Safety and Health Meetings ..... [162]
Section 5—Special Safety and Health Meetings ..... [163]
Section 6—First Aid Facilities and Reports ..... [164]
Section 7—Accident Investigation and Reporting ..... [164]
Section 8—Quarterly Safety and Health Meetings ..... [165]
Section 9—Annual Meeting ..... [166]
Section 10—Minutes of Safety and Health Meetings ... [166]
Section 11—Protective Devices, Wearing Apparel and Equipment ..... [167]
Section 12—New or Changed Protective Devices, Wearing Apparel and Equipment ..... [167]
Section 13—New or Changed Work Processes ..... [167]
Section 14—Heating, Ventilation and Air Conditioning ..... [168]
Section 15—Chemicals, Solvents and Compounds ..... [168]
Section 16—Ionizing Radiation ..... [169]
Section 17—In-Plant Air and Water Pollution ..... [169]
Section 18—Permissible Noise Exposures ..... [170]
Section 19—Government Inspections and Reports ..... [170]
Section 20—Working Alone ..... [171]
Section 21—Access to the Plant ..... [171]
Section 22—Safety Education and Training ..... [171]
Section 23—Alcoholism ..... [172]
Section 24—Pay on Day of Injury ..... [172]
Section 25—Pollution Shutdown ..... [173]
Section 26—Complaints and/or Disputes ..... [173]

SAFETY AND HEALTH CONTRACT LANGUAGE

The Safety and Health Program outlined here, is comprehensive. It is not suggested that the exact language of the outline must be negotiated into each contract because of the differences in various manufacturing processes, different safety and health problems, and present language.

It is recommended that prior to negotiations, the Safety Committee go over all accident reports and Safety Committee meeting minutes in order to find out what changes are needed.

In this way the Negotiating Committee can determine what best suits the individual needs of the members so that the best possible Safety and Health Program can be provided.

This is the test that an effective and practical Safety and Health Program must meet. The job will not be an easy one, but it must be done.

SECTION 1

OBJECTIVES AND OBLIGATIONS OF THE PARTIES

The Company and the Union will cooperate in the continuing objective to eliminate accident and health hazards.

The Company shall provide a place of employment at each of the plants, that is free of physical and health hazards.

SECTION 2

JOINT UNION-MANAGEMENT SAFETY AND HEALTH COMMITTEE

The Union and the Company shall establish a Joint Safety and Health Committee.

The Union Safety and Health Committee shall be appointed by the Union, and be procedurally structured and staffed in a manner equivalent to the Union Grievance Committee.

The Union and Company shall certify to each other, in writing, their Safety and Health Representatives, and their titles.

The Union Co-Chairman, or an area, zone, or divisional Committeeman shall have access to all areas within the jurisdiction of the Local Union at any time of the day or night, after proper notification to the Plant Protection Patrolman at the area he is entering.

Union Safety Representatives shall be afforded such time off as is necessary to transact legitimate Safety and Health matters; such as, but not limited to, accident investigation, Safety and Health meetings, plant inspections, complaints, etc., after proper notification to their supervisors.

While Union Representatives are on legitimate matters of Safety and Health they shall suffer no loss of wages.

The Union Co-Chairman of the Committee shall be fully paid by the Company.

SECTION 3

PLANT INSPECTIONS

At least once each month an inspection of Safety and Health conditions shall be made in each plant.

The Union and Company Safety Representatives who shall make the plant inspection shall be designated by the Union and Company Co-Chairmen of the Committee.

The purpose of the plant inspection shall be to observe such things as, but not confined to:

Industrial Sanitation and Personal Facilities

Housekeeping

Plant Lighting

Switch Lock-Out Procedures

Respiratory Equipment

Fire Equipment

Emergency Injury Equipment—ambulance-stretchers-blankets-etc.

Heating, Ventilating and Air Conditioning Systems

In-Plant Air and Water Pollution

First Aid Stations

The usage of Chemicals, Solvents, and Compounds

Tools and equipment being used by the employees in the performance of their duties.

At the conclusion of the inspection a written report shall be prepared by the Company. The report shall include recommendations, by either Union or Company representatives making the investigation, for corrections of conditions found to be Safety and Health hazards. Tentative completion dates shall be set forth on the report.

Copies of the report shall be furnished to the Staff Representative who services the Local Union, and to designated representatives of the Union Committee.

In the event a dispute develops as to housekeeping conditions, unsafe work practices, or unsafe conditions, pictures of the dispute area shall be taken and forwarded to the representatives of the Union who receive copies of the inspection report.

SECTION 4

JOINT UNION-MANAGEMENT SAFETY AND HEALTH MEETINGS

At least once each month the designated Representatives of the Union and Company shall meet and take up

such complaints as may be brought forth by either the Union or Company Representatives.

The Union and the Company shall advise each other, in writing, sufficiently in advance of the meeting the items it wishes to discuss.

The written report of the prior plant inspection shall be reviewed.

The Company shall inform the Union what Safety and Health recommendations have been completed. The Union shall indicate to the Company their agreement or their disagreement as to whether or not the recommendations have been completed.

The Company shall inform the Union what Safety and Health recommendations have not been completed, and the reasons therefore. The Union shall indicate to the Company their position on the recommendations that have not been completed.

Special attention shall be given to items that appeared on prior inspection reports.

SECTION 5

SPECIAL SAFETY AND HEALTH MEETINGS

Special meetings may be requested by the Union or Company Co-Chairman. Such meetings shall be held within twenty-four (24) hours after notification, or, as otherwise might be mutually agreed to by the parties.

The purpose of the meeting shall be to take up matters of Safety and Health that require immediate consideration and action. The Union and the Company shall advise each other who their respective representatives shall be.

SECTION 6

FIRST AID FACILITIES AND REPORTS

First aid facilities and a registered nurse or a qualified first-aid attendant who is an employee of the Company shall be provided by the Company to the extent necessary to provide adequate first aid for all employees on all shifts.

The Company will provide the Union Co-Chairman with daily copies of all first aid reports involving bargaining unit employees of the Company.

SECTION 7

ACCIDENT INVESTIGATION AND REPORTING

The Union Co-Chairman, area, zone and divisional Committeeman shall be notified immediately when an accident has occurred. The accident investigation shall be held immediately or as otherwise mutually agreed to.

Designated representatives of the Union and the Company shall convene and investigate all accidents involving fatalities, disabling injuries, extended loss of time by an employee, or such other serious situations as merit investigation in the opinion of the Union or the Company.

The Union and Company Representatives shall make on-the-spot investigations, hear witnesses, and examine records as required in the opinion of the Union or Company, to determine the cause of the accident.

Remedial or preventive measures, to prevent re-occurrence, shall promptly be put into effect.

The accident report shall be prepared by the Company on a form mutually agreed to. The Company shall furnish adequate copies of all accident reports to the Joint Safety and Health Committee in each plant. One copy of the report shall be sent to the International Safety and Health Department.

SECTION 8

QUARTERLY SAFETY AND HEALTH REVIEW MEETINGS

The Staff Representative who services the Local Union, the President of the Local Union, and the Chairman of the Safety and Health Committee, and the designated Representatives of the Company shall meet every three (3) months to review and evaluate all aspects of the Safety and Health Program in conformity with the agenda agreed to by the Union and Company. The agenda for this meeting shall include the Plant Inspection Reports, (see Section 3), and the following:

ACCIDENT INVESTIGATION REPORTS

FIRST AID CASES

NATURE OF LOST-TIME INJURIES

TYPES OF ACCIDENTS

CLASSIFICATION OF INJURIES

SAFETY STATISTICS—FREQUENCY-SEVERITY

SAFETY AND HEALTH RECOMMENDATIONS

HOUSEKEEPING SUMMARY

NOISE EXPOSURES

UNSAFE CONDITIONS SUMMARY

In the event disputes should develop between the Union and the Company as to the accuracy of either party's statements, relating to their evaluation of the program, this disagreement shall not hold up the Quarterly Review Meeting. The disputes shall be so noted in the minutes, and the meeting shall continue. The items of dispute shall be brought up after the meeting has been completed in the Special Safety and Health meetings, as set forth in Section 5.

SECTION 9

ANNUAL MEETING

The Union and the Company shall each designate three representatives to a joint committee on safety which shall meet annually to review the operation of the program with a view to achieving maximum understanding as to how the Company and the Union can most effectively cooperate in achieving the objective set forth in the Safety and Health Article.

SECTION 10

MINUTES OF SAFETY AND HEALTH MEETINGS

Minutes of all Safety and Health meetings between the Union and Company shall be prepared by the Company.

Copies of the minutes shall be mailed to the Staff Representative, Local Union President, and the Union Safety Chairman within ten (10) days, (excluding Saturday, Sundays, and holidays), after the date on which the meeting was held.

If the Union Chairman shall disagree with the accuracy of the minutes as prepared by the Company, he shall set forth his reasons for such a disagreement in a letter to the Company; and the minutes, except for said disagreement, shall be regarded as satisfactory.

Minutes shall conform to the following outline:

(1) Date and place of meeting;

(2) Names and positions of those present;

(3) Description of each Safety and Health subject discussed;

(4) Statement of Union position;

(5) Statement of Company position;

(6) Summary of discussion;

(7) Decision reached, if any.

SECTION 11

PROTECTIVE DEVICES, WEARING APPAREL AND EQUIPMENT

Protective devices, wearing apparel and other equipment necessary to protect employees from physical and health hazards shall be provided by and paid for by the Company.

Protective devices, wearing apparel and equipment shall be mutually agreed to and listed in a "Safety Book". The book shall be reviewed and brought up-to-date twice each year. The Company shall make provisions for the proper cleaning and maintenance of all safety equipment and wearing apparel.

SECTION 12

NEW OR CHANGED PROTECTIVE DEVICES, WEARING APPAREL AND EQUIPMENT

When the Company changes current protective devices, wearing apparel and equipment, or extends the use of protective devices, wearing apparel and equipment to new areas, or issues new rules relating to the use of protective devices, wearing apparel and equipment, the matter will first be discussed with the designated Representatives of the Union.

When agreement has been reached on the new or changed protective devices, wearing apparel or equipment, it shall be set forth in the Safety Book as outlined in Section 11.

SECTION 13

NEW OR CHANGED WORK PROCESSES

Prior to changing a current work process or the introduction of new machinery, or the establishment of a new work process, the Company shall notify the designated Representatives of the Union.

The designated Union and Company Representatives shall inspect the changed or the new work process or the new machinery before they are put into operation to insure the safety of the employees.

The employees who work on the changed or new work process, or the new machinery shall be instructed and trained in their safe operation.

SECTION 14

HEATING, VENTILATION AND AIR CONDITIONING

Proper heating, ventilation and air conditioning systems shall be installed where needed, and maintained in good working condition.

The word "Proper," as used in the preceding paragraph, in relation to ventilation shall mean: as set forth by the American Conference of Governmental Hygienists, Eleventh Edition, 1970, Library of Congress, catalog card number 62-12929, and as improved by the American Conference of Governmental Hygienists from time to time.

The word "Proper," as used in the first paragraph of this section, in relation to heat shall mean: where practicable in the judgment of the Union and Company Safety Representatives.

The words "where needed," as used in the first paragraph, shall be determined by the Union and Company Safety Representatives.

SECTION 15

CHEMICALS, SOLVENTS AND COMPOUNDS

Where the Company is currently using chemicals, solvents and compounds, or when new chemicals, solvents or compounds, etc. are to be introduced, the Company shall

inform the employees what hazards, if any, are involved, and what precautions are taken to insure the Safety and Health of the employees. The Company shall supply documentary evidence to the Union to this effect.

SECTION 16

IONIZING RADIATION

Where ionizing radiation is possible, the Company shall maintain Safety Standards not less than those accepted by the Federal or State Standards, which are now in effect, or may be promulgated in the future.

SECTION 17

IN-PLANT AIR AND WATER POLLUTION

The Company shall, to the greatest degree possible, continue to work toward the elimination of all pollution, particularly in the "In-Plant" area.

The Company will conduct periodic In-Plant air and water sampling and testing under the direction of qualified personnel.

Where the Union Co-Chairman alleges an on-the-job health hazard due to air or water pollution, the Company will make additional tests. The report based on such additional tests shall be submitted to the designated representatives of the Union at a meeting, and the findings evaluated in accordance with Table 42-B, Threshold Limit Values for 1968, as adopted by the American Conference of Governmental Industrial Hygienists in St. Louis, Mo., May 13, 1968.

If such evaluation indicates an excess of the Threshold Limit Values in the said table, the Company shall take immediate steps to correct the situation.

SECTION 18

PERMISSIBLE NOISE EXPOSURES

No employee shall be subject to sound levels exceeding the limits set out in paragraph 50-20410 of the Safety and Health Standards for Federal Supply Contracts under the Walsh-Healey Act, or the Standards of any subsequent Federal State or Local Acts or Laws, whichever is higher.

SECTION 19

GOVERNMENT INSPECTIONS AND REPORTS

When any branch of the Federal, State, Provincial, County or City Government conducts an inspection or test in any plant or sub-section thereof, either regular or at the request of the Union or Company, the following procedure shall be followed:

As soon as the Company knows that an inspection or a test is to be made in the plant or sub-section thereof, they shall promptly notify the designated Union Representatives.

The designated representatives of the Union shall accompany the Inspector to an area of the plant where the inspections are to be made, or where the test is to be taken.

The results of such an inspection or test, copies of which are given to the Company by the branch of the Government which made the inspection or test, shall also be given to the Union by the Company.

The Company shall also furnish to the Union copies of all reports relating to Safety and Health submitted by the Company to any agency of Local, Provincial, State or Federal government.

SECTION 20

WORKING ALONE

No employee shall be required to work alone in any area beyond the observation of other persons.

SECTION 21

ACCESS TO THE PLANT

Representatives from the International Safety and Health Department and/or their technical advisors shall be permitted ingress, after proper notice, to all plants of the Company for the purpose of determining fact in Safety and Health situations where disputes have developed between the Local Union and Company.

SECTION 22

SAFETY EDUCATION AND TRAINING

A Safety Talk Program shall be established, where none exists, which shall provide at least one (1) safety talk to the employees per week. This program is to be administered by the Company through the foreman or other safety representatives of the Company. One half of the safety talk shall deal with general items relating to Industrial Safety and Health. The second half of the talk shall deal with the employee, his job, his department, and/or immediate work area.

IN ADDITION, ALL NEW EMPLOYEES HIRED BY THE COMPANY SHALL BE GIVEN A THOROUGH ORIENTATION OF THE SAFETY AND HEALTH PROGRAM.

The Company and the Union shall establish and maintain a sound, practical, and workable Safety Education Training Program.

The Safety Education Training Program shall cover two (2) primary areas, and shall be governed by acceptable safety methods and procedures.

The first area will provide for Safety Education and Training in general; programs such as hard hats, eye protection, safety shoes, fire prevention, etc.

The second area will provide for individual Safety Training of the employees; his job, his responsibilities, safety-wise to himself and others, the equipment, tools and materials he uses, chemicals, solvents, compounds, etc.

The Company and the Union shall avail themselves of Safety Education Programs provided by the several States where such programs exist.

SECTION 23

ALCOHOLISM

Without detracting from the existing rights, and obligations of the parties recognized in the other provisions of this Agreement, the Company and the Union agree to cooperate at the plant level in encouraging employees afflicted with alcoholism to undergo a coordinated program directed to the objective of their rehabilitation.

SECTION 24

PAY ON DAY OF INJURY

An employee hurt in an industrial accident will be paid for the hours lost receiving medical care on the day he was hurt and subsequent days at his straight time hourly base rate, plus any overtime premium and applicable shift differential. In cases where the attending doctor or nurse thinks the employee should not return to work and finish out the work day, he will be paid in accordance with the above for all hours he would have worked that day.

SECTION 25

POLLUTION SHUTDOWN

Any employee whose layoff is at least in part the result of a plant or department shutdown for purposes of remedying pollution conditions shall, during the term of such layoff, receive his normal earnings. For purposes of this section normal earnings shall be computed in the same manner as vacation pay.

SECTION 26

COMPLAINTS AND/OR DISPUTES

Complaints:

It is the intent of the parties that no employee or employees shall be required to work under conditions which are unsafe or unhealthy, and that an employee who believes that he is being so required shall have the right to:

(1) File a grievance in the —— step of the grievance procedure for preferred handling in such procedure and arbitration; or

(2) Meet with their foreman to make him acquainted with the nature of the complaint. The foreman shall investigate the complaint immediately. If the foreman determines the complaint to be valid, immediate corrective action shall be taken and the employees shall be informed of this fact.

If the foreman determines that no hazard exists, he shall so inform the employee or employees. A discussion relating to the foreman's findings shall then be held. If, as the result of such discussion, the complaint is not resolved and the employee or employees still believe that a hazard exists they shall have the right to:

(The following step shall be used where there are Shift Safety Representatives).

Have the foreman summon the Shift Safety Representative. After the Shift Safety Representatives has investigated the complaint, a discussion shall be held relating thereto. If it is then determined that a hazard exists, immediate corrective action shall be taken.

In the event the complaint is not resolved as the result of such discussion, and the employee or employees and the Shift Representative still believe a hazard exists, the complaint shall then be reduced to writing on a form that has been mutually agreed to, which shall be provided by the Company.

On the form the Union Shift Representative shall set forth all matters relating to the nature of the complaint. The foreman shall set forth the results of his investigation, and set forth why he feels a hazard does not exist. The form shall be signed by the Union Shift Representative and the foreman. The Shift Representative shall then have the right to:

(Where there is no Shift Representative, the form referred to in the preceding paragraph shall be filled out by the area, zone or divisional Committeeman as set forth in the following paragraph):

Request the foreman to notify the designated zone, area or divisional Union Safety Representative and the designated Representative from the Company, and make them aware of the existence of the Safety and Health complaint. This notification shall be made immediately.

At this point in the procedure the employee or employees shall be granted relief from their job or jobs

without the loss of their right to return to such job or jobs, and be assigned other work of a similar job content and pay until the dispute is settled in the above prescribed manner.

In the event the Company decides to continue to operate the job or jobs in question, the employee or employees who were given relief from the job or jobs shall have the right to inform the newly assigned employees why they felt the job was unsafe.

The Union and Company Representatives shall make arrangements to review the written complaint and view the scene of the complaint. After the review and investigation, a meeting shall be held. The Union Representatives at this meeting shall be the zone, area or divisional Committeemen, and the Shift Representative, and the designated Company Representatives. If, during the course of the meeting, it is determined that a hazard does exist, immediate corrective action shall be taken.

In the event the complaint is not resolved during the course of the meeting, and the Union zone, area or divisional committeeman still believes that a hazard exists, he shall have the right to:

Notify the Union Safety Chairman of the existence and nature of the complaint.

The Union Chairman, zone, area or divisional Committeeman and the Shift Representative, and the designated Representative of the Company shall make arrangements to review the written complaint, investigate the scene of the complaint, and then to meet on the matter.

If, during the course of this meeting it is determined that a hazard does exist, immediate corrective action shall be taken by the Company.

In the event the complaint is not resolved during the course of the meeting, and the Union Chairman believes

that a hazard does exist, he shall notify the President and the Grievance Chairman of the Local Union, and the Staff Representative who services the Local Union.

The unresolved complaint now becomes a dispute.

Disputes:

The Staff Representative, Local Union President, Union Chairman and Grievance Chairman, and the designated Representatives from the Company shall make arrangements to review the written complaint, investigate the scene of the complaint, and then to meet. If, during the course of this meeting it is determined that a hazard exists, immediate corrective action shall be taken by the Company.

In the event the complaint is not resolved during the course of this meeting, and the Staff Representative still believes that a hazard exists, he shall have the right to:

Notify the Company that the dispute shall be arbitrated immediately.

The Arbitrator shall be called by the Union and the Company immediately. He shall review the written complaint, investigate the scene of the complaint, and then meet with the Union and Company to hear their arguments relating to the dispute. He shall render his decision immediately.

In the event the Arbitrator determines that a physical or health hazard does exist, he shall have authority to order a remedy.

In the event the designated Union Representatives believe a physical or health hazard exists, or that any of the sections of this article are being violated by the Company, they shall be permitted to utilize the foregoing procedure, even though no complaint was registered by the employee or employees.

All quota systems relating to alleged safety violations, e.g. where a supervisor must, within a given period of time, issue a certain number of Safety Violation slips to the employees under his jurisdiction, be discontinued forthwith.

All Safety Violation slips now in an employee's file, which were handed out in the above described manner, be removed from the files and be declared null and void.

IN THE DISTRICT COURT
OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF SHOSHONE

[Title omitted]

AFFIDAVIT OF LAVERN A. MELTON IN SUPPORT OF DEFENDANT STEELWORKERS' MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, FOR PARTIAL SUMMARY JUDGMENT

Lavern A. Melton, being duly sworn, deposes and says:

1. I was employed by the Sunshine Mining Company ("Company") at its underground mine in Kellogg, Idaho during the period from August, 1965 until May, 1979. From 1965 to about 1969 I worked as a contract miner; thereafter, beginning in 1969, I worked as a shaft repairman.

2. Throughout this time frame and continuing to date, the United Steelworkers of America, along with its Local 5089, has been the exclusive bargaining agent of the Company's production and maintenance employees under a series of successive collective bargaining agreements executed between the parties. The Agreement in effect on May 2, 1972 was the three-year agreement dated March 11, 1970.

3. I was elected President of Local 5089 in the spring of 1970, after the death of my predecessor, Richard Fleming, and was serving in that capacity at the time of the underground fire at Sunshine on May 2, 1972. Prior to being elected President, I served as the Financial Secretary. During the first term of my presidency (i.e.,

until June 1973) the membership of Local 5089 consisted of about 500 rank-and-file employees of Sunshine Mine.

4. The International Constitution provided for each local union (I believe there were approximately 5,000 Steelworkers locals chartered by the International as of 1970) to establish a Safety and Health Committee. Local 5089 had such a committee prior to my election as President. As President I was automatically an ex officio member of the Local's Safety and Health Committee, as well as other committees.

5. Shortly after I became President, there were several vacancies on the Safety and Health Committee and I appointed rank-and-file members to fill them. Neither the International Constitution nor the Local Union By-Laws contained any written criteria or qualifications for making such appointments. In exercising my authority to make the appointments, I was well aware that none of the rank-and-file members of Local 5089 were mining engineers or had other professional degrees or other background that qualified them as experts in mine safety. This was also a matter of common knowledge among the membership of Local 5089. Because none of the rank-and-file members were experts in mine safety, I knew that in carrying out their activities the Committee members could only be expected to rely on their common sense and practical knowledge from their experience as underground miners. In selecting members to serve on the safety committee, I looked for certain characteristics that I believed would make it possible for the committee to serve its intended function: (1) the person had to be in a job which, over a period of time, brought him into contact with workers scattered throughout as broad an area of the mine as possible; (2) the person had to be conscientious and responsible about carrying out his committee activities—including being willing to make himself available to the membership when needed; (3) the person had to have acquired some practical, first-hand

experience in job safety within the mine; and (4) the person had to be an individual who was not easily intimidated by the Company. By tradition, one member of the Committee was selected from among the employees who worked above ground. That person was not expected to have underground working experience.

6. During the period from the summer of 1970 until the Sunshine fire in May 1972 Local 5089's Safety and Health Committee consisted of Chairman Don Beehner (whom I appointed), Einar Peterson, Gordon Whatcott (whom I appointed), and Kenneth Chambers (an above-ground worker). Beehner and Whatcott died in the fire; Peterson survived the fire, but died several years ago of unrelated causes.

7. In accordance with the requirements of the International Constitution, Local 5089 conducted regular monthly membership meetings. They were held on the second Saturday of each month. On those occasions, the general activities of the Local were discussed and the chairmen of various committees, including the Safety and Health Committee, gave regular status reports concerning matters of current interest. (The kinds of matters on which the Chairman of the safety committee would report included grievances related to safety concerns, the outcome of state or federal inspections of the mine, and the status of efforts to obtain federal or state regulations or legislation.)

8. In addition to the regular monthly membership meetings, rank-and-file members learned what was going on in the mine with respect to safety and health issues through various informal channels. Workers assigned to the various shifts changed into their work clothes in the same area prior to their shifts and showered together at the end of the shift. Members of the Safety and Health Committee and myself were available to the membership on those occasions. Any member who wanted to voice a complaint or raise a question concerning safety

and health—no matter how major or minor a problem—had the opportunity to do so. On numerous occasions I was approached by members—individually or in small groups—who told me that they believed that a certain safety hazard existed or who asked about the status of some safety matter. In this setting, both before and after my shift, I also regularly spoke with the Local's safety committeemen concerning their activities in administering the safety and health article of the collective bargaining agreement. Because Local 5089 was a relatively small organization that functioned informally, the members knew who the safety committeemen were and what was going on in the mine with respect to safety and health issues. In addition, the members periodically had an opportunity to observe their safety committeemen in connection with monthly joint labor-management safety committee tours of the mine and, as well, the periodic mine inspections conducted by the State of Idaho in which Local 5089 committeemen accompanied the inspectors pursuant to the provisions of the collective bargaining agreement. Finally, the chairman of the safety committee periodically reported to the membership on current matters of interest relating to the Sunshine Mine at the Local's regularly scheduled membership meetings held on the second Saturday of each month. (See discussion at paragraphs 10, 11-13.)

9. I never represented or stated at any membership meeting or on any other occasion that the Union had any expertise in mine safety generally or in mine ventilation or evacuation systems in particular or, further, that the membership should rely on the Union to guarantee or ensure that no hazardous conditions of employment would exist at the Sunshine mine. As President, I regularly attended the membership meetings (during the period 1970-72 I believe I missed only one or two because of conflicts with my shift at work). I never recall any member of the Local's Safety Committee ever making

any such statements or representations at a meeting or for that matter on any other occasion. Indeed, the underground miners (including myself) who comprised the large majority of the membership were well aware from their own daily first-hand experiences in the mine not only that the union had no authority to correct safety hazards but also how dangerous an occupation it was and, as well, how difficult it was to get this Company to eliminate the hazards we faced.

In those circumstances, even if I had been silly enough to claim that I or any other union official was an expert on mine safety, the underground miners, in my judgment, would have paid no attention to any such claim. They knew better.

10. The provisions set forth in the Safety and Health Article of the collective bargaining agreement between the parties define the extent of the Local Union Safety and Health Committee's authority. Article IX of the March 11, 1970 Agreement (which was in effect at the time of the fire) provided in full as follows:

Safety and Health

1. The Company and the Union will continue to cooperate toward the objective of eliminating accident and health hazards. The Company shall continue to make reasonable provisions for the safety and health of its employees at the plant during the hours of their employment. Protective devices, wearing apparel, and other equipment necessary to protect employees from injury shall be provided by the Company in accordance with practices now prevailing in each separate department or as such practices may be improved from time to time by the Company.

2. An employee who believes that he is being required to work under conditions which are unsafe beyond the normal hazards inherent in the operation

in question, may request an immediate meeting with the shift boss, with or without consultation with his Assistant Grievance Committeeman. If, as a result of these actions, the employee still believes he is being required to work under conditions which are unsafe beyond the normal hazards inherent in the operation in question, a committee consisting of two (2) supervisory personnel and two (2) reliable employees, approved by the Union, shall inspect the operation in question within twenty-four (24) hours and shall decide what steps, if any, are necessary to correct the hazard.

In the event the committee cannot agree, the employee involved may then file a grievance in Step 2 of the grievance procedure. It is understood and agreed that if a grievance is filed on an unsafe working condition, management and Union representatives shall give said grievance preferred handling, and shall expedite its movements through the grievance procedure.

The employee may on request, be relieved from the job and be assigned to other work at the discretion of the Company. If an employee exercises his rights under this section and the Company believes conditions are not beyond the normal hazards inherent in the operation in question, nothing contained in this section shall abridge the rights of the Company under other sections of this Agreement.

Neither shall the foregoing preclude the Company from assigning another employee to the job in question and it is further understood that no employee, other than communicating the facts, shall take any steps to prevent another from working on the job.

3. A Safety Committee consisting of three employees designated by the Union and three Management members designated by the Company shall be

established. By mutual agreement, the committee may be increased to not more than six representatives for each party. The safety committee shall hold regular meetings at times determined by the committee. The function of the safety committee shall be to advise with the Plant Manager concerning safety and health matters but not to handle grievances. In the discharge of its function the safety committee shall: Consider existing practices and rules relating to safety and health, formulate suggested changes in existing practices and rules, and recommend adoption of new practices and rules. Advices of the safety committee, together with supporting suggestions, recommendations and reasons shall be submitted to the Plant Manager for his consideration and for such action as he may consider consistent with the Company's responsibility to provide for the safety and health of its employees during the hours of their employment and the mutual objectives set forth in Section 1.

4. A Union member and a Management member of the safety committee may accompany the State Mine Inspector or his Deputy, on any inspection made at the property.

5. Two men shall be designated by the Union to accompany the Safety Engineer on tours of the mine. Once each month, one of these two men, together with the Safety Engineer, shall make a tour of a section of the mine. The results of this tour shall be considered at the following Union-Management safety committee meeting.

6. In the event a recommendation with respect to safety conditions that needs action immediately, concurred in by a majority of the entire committee, is not carried out, the Union may have recourse to the grievance procedure.

The Union representatives' right to participate along with an equal number of management representatives in joint monthly tours of various sections of the mine, to participate along with Company representatives in periodic inspections conducted by the State of Idaho mine inspectors, to "advise with" and make "suggestions [and] recommendations" to the Plant Manager concerning how to abate safety hazards, and to file grievances in the limited circumstances permitted by Article IX, § 6, all owed their existence to the specific provisions of the Safety and Health Article of the collective bargaining agreement. Neither the local union nor the safety and health committee had any other contractual right or authority to deal with the Company on questions of safety and health. And, to the extent that the Union Safety Committee undertook to act, it did so in the capacity of administering and/or enforcing that Article of the agreement.

11. Pursuant to the collective bargaining agreement, the Company was obligated to "provide a sufficient number of printed copies of th[e] contract to enable each member of the Local Union to secure a copy" (Art. IX, § 6). Each member had received a copy of the 1970 contract far in advance of May 1972.

12. As noted, under the 1970 Agreement, in any circumstance where the Union safety committee members believed that a safety hazard existed which required abatement, their role under the Agreement was limited to "advising with" and making "recommendations" to the Plant Manager "for his consideration." The Union had no authority to correct any safety hazard that it believed to exist and its recommendations were, by the express language of the Agreement, subject to the final decision of the Plant Manager. The Company retained the sole prerogative and the entire responsibility for determining what safety measures, if any, it would put into effect. (Based on my personal experience in dealing

with the Sunshine management, I can state that this Company was very difficult to budge; it closely guarded its managerial discretion and prerogatives—especially when a Union recommendation would require some substantial cost.)

13. In any event, under Article IX, if the Plant Manager rejected a Union committee recommendation—as he had an absolute contractual right to do—there was nothing the Union could do through the grievance process. There were only two avenues open: if an individual employee faced a condition that was unsafe beyond the normal hazards inherent in that operation, he could exercise his contractual right to refuse to perform the particular operation, and the Company could not impose discipline on him for refusing to do so; second, the Union could request an inspection by the state or federal mine inspectors with the hope that the inspectors would issue a citation against the Company and set an expedited abatement date. In evaluating what assistance Local 5089 could expect to get from the state or federal inspectors, the officers and safety committee members recognized and advised the general membership that the inspectors could cite the Company only if it failed to meet a mandatory provision of the Code. There were many loopholes in the Code, and it was the Union's experience that the Company consistently told us that it would not make any changes that were not required by mandatory Code provisions.

14. In practice, the Local generally preferred to request state rather than federal inspections. There were several reasons: (1) under the terms of Article IX, § 4 of the collective bargaining agreement quoted above, the Company was not obligated to permit a Union safety committeeman to accompany a federal inspector. Thus, the Union did not have the benefit of its representative's presence in a federal inspection whereas, under the contract, it did when a state inspection took place; (2) as a

consequence, the Union committeemen became acquainted with and built up a level of confidence in the state inspector; and (3) since the worker protection provisions of the Idaho Code had to be "at least as effective as" the federal law, we believed that it made sense to call in the state inspectors.

15. During my first term as President, staff representative Larry Marshall was assigned by the International Union to service Local 5089 in addition to the other local unions he serviced. Marshall was assigned to the subdistrict 7 office in Spokane which was within the jurisdiction of District 38, USWA. As part of the services he provided to Local 5089, Marshall regularly attended its monthly membership meetings and also was available to me and the other local union officers for advice and guidance on any issues we might raise, including those relating to safety and health. At each monthly membership meeting, Marshall gave an oral report generally relating to activities of the International Union (such as the status of industry bargaining and/or federal legislation that the Steelworkers supported). Larry Marshall had no expertise with regard to mine safety. He had never even worked in a mine and it was common knowledge that prior to becoming employed by USWA Larry worked as a draftsman in an office of a Kaiser Aluminum plant in Spokane.

16. At no local meeting that I ever attended nor at any other time that I'm aware did Larry Marshall ever represent to the members that he—or any other official or employee of USWA—had any expertise in mine safety or that the members should rely upon him or any other Steelworkers official to ensure that their jobs in the Sunshine mine would be free of any hazards. I might add that even if Larry would have made such a statement, I am confident that the miners—who knew better than anyone else about the hazards they faced daily underground—would have paid no attention to him.

17. During my first term as President, I was aware that the International Union had a Safety and Health Department in Pittsburgh. That department then consisted of a Director—Paul Schremp—and a small number of technicians, including Adolph Schwartz and Marco Vestich. None of those individuals was a mining engineer or otherwise expert in mine safety generally or mine ventilation or evacuation systems in particular. As far as I am aware, none of those individuals ever represented otherwise to me or to the membership of Local 5089. Nor did they ever represent to me or to the membership that Local 5089 should rely on them to ensure a safe workplace at the Sunshine Mine.

18. The Department's function was to provide general advice to approximately 5,000 local unions throughout the Steelworkers' jurisdiction in the basic steel, aluminum, can, nonferrous metal, fabricating and miscellaneous industries. In this regard, the Safety and Health Department's function was similar to the function served by the other USWA departments headquartered in Pittsburgh (e.g., the civil rights department, the arbitration department, and the pension and insurance department).

19. Effective May 1979 I was employed by the Steelworkers International Union. Effective August 1, 1983—shortly before I executed this affidavit—I was temporarily laid off from the Steelworkers' payroll as a result of a general layoff affecting several hundred staff representatives and office personnel. As a result of that layoff, I returned to work for the Sunshine Mining Company in Kellogg and I am working underground at the present time.

/s/ Lavern A. Melton
LAVERN A. MELTON

[Jurat Omitted]

IN THE DISTRICT COURT
OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF SHOSHONE

[Title Omitted]

AFFIDAVIT OF LAWRENCE L. MARSHALL IN SUPPORT OF DEFENDANT STEELWORKERS' MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, FOR PARTIAL SUMMARY JUDGMENT

Lawrence L. Marshall, being duly sworn, deposes and says:

1. I am employed by the United Steelworkers of America, AFL-CIO-CLC, International Union as a staff representative, a position that I have held since May, 1967. When I first came onto the staff, and continuing through May 1972, I was assigned, among other things, to service Local 5089. The membership of Local 5089 was comprised exclusively of employees who worked for the Sunshine Mining Company at its Kellogg, Idaho mine. I was never underground in that mine.

2. Among the functions I performed in servicing Local 5089 was to attend its regularly scheduled membership meetings held on the second Saturday of each month. On those occasions, I regularly made an oral report to the membership relating to activities of the International Union of current interest such as the status of industry bargaining and federal or state legislative initiatives that the International was concerned about. In addition, I participated, along with the Local's negotiating committee, in negotiating the March 1970 collective bargain-

ing agreement with Sunshine; I handled grievances in the final step of the grievance-arbitration procedure established by that agreement; and I made myself available to Local 5089 President Melton and his fellow officers to provide advice and assistance, upon request, covering any subject they might raise, including safety and health.

3. I never have had any mining experience, and I never have worked in a mine. Nor have I ever acquired through professional schooling or otherwise any expertise in mine safety in general or in mine ventilation or evacuation systems, in particular. My primary employment experience before joining the Steelworkers staff was in an office job at Kaiser Aluminum in Spokane, Washington, where I worked as a draftsman. I made known all the foregoing to the general membership of Local 5089, and this was common knowledge in the small local community where I resided.

4. At no time at any membership meeting—or on any other occasion—did I ever represent or state to the membership of Local 5089 or any individual members either that I had any expertise with respect to mine safety or that any other Steelworkers official or employee possessed such expertise. Nor did I ever represent or urge any member of Local 5089 to rely upon the expertise of the Steelworkers as a means of guaranteeing or assuring that working conditions in the Sunshine Mine would be safe. As a practical matter, the miners would have paid no attention even if I would have made such statements. The underground miners had first-hand experience with respect to the dangerous conditions that existed in the mine, and they would have been the first to recognize that I had no expertise upon which they should rely.

/s/ Lawrence L. Marshall
LAWRENCE L. MARSHALL

[Jurat Omitted]

ORAL DEPOSITION OF GORDON OSTERBERG
TAKEN 10/17/83

* * * *

[37] Q Did anybody ever tell you prior to May 2nd, 1972, that the union was participating in a Joint Union-Management Safety Committee?

A No.

Q Now, you've talked about the fact that you have seen that group in action after May 2nd, 1972.

A Uh-huh.

Q Did you ever see that group stopping by your work place or being down in the mine, this Joint Management-Union Safety Committee before May 2nd, 1972?

A No.

Q Do you remember anybody reporting at any of the union meetings what if anything the Safety Committee had done or were doing?

A No.

Q Do you know whether or not the union had a Safety Committee prior to May 2nd, 1972?

A No, I don't. I don't know.

Q If you had a complaint about your working conditions or management or safety in the mine prior to May 2nd, 1972, who would you take that complaint to?

A You mean if there was something that wasn't safe where I worked?

Q Sure.

A To Bebb, my shifter.

[38] Q And if Bebb wouldn't do anything about it, who would you take your complaint to?

A Oh, I guess I would have had to go higher up. But he always, like I say, took care of it.

Q You never had to go to the union with any of your complaints, then?

A No.

* * * *

[48] Q (By Mr. Howard) For the initiation fee that you paid and the dues that you paid in, what did you get from the union? What were they supposed to do for you? What was your understanding?

A Well, I couldn't just sit here and tell you all what they were, but lots of things. It's just like now, I am getting my teeth fixed. I am still a union member and still—The union pays the dental work. And I am now getting my teeth fixed. That's one of the benefits I got out of it, among a lot of other things.

Q You got a retirement?

A Well, what it is there is, they keep us retirees on the dental plan, you see.

Q Did you expect the union to represent your interest when it came to anything that had to do with the company?

A Yes.

Q Did that include things like wages—

A Yup.

Q —and fringe benefits—

A Yes.

Q —like dental? And how about safety; were they [49] supposed to represent your interest with regard to safety?

A Well, yeah.

Q And if you had a safety problem, even though you didn't remember who was on the Safety Committee or even if there was a Safety Committee, who would you have taken your complaints to prior to May 2nd, 1972?

A Like I said, Bebb.

Q Bebb was your shifter?

A Yeah.

Q If the union was going to represent your interest against the company—

A It was up to Gipson.

* * * *

ORAL DEPOSITION OF KENNETH RILEY
TAKEN 10/17/83

* * * *

[11] Q You mentioned earlier that you suggested to the union that the "48-4" stope should be shut down?

A Yes.

[12] Q Why should it have been shut down?

A It was air blasting every day. They was mining around it, and I fitured if they shut it down, that maybe that it would quit, you know; why they would take pressure off of it. They never did quit it when I was in there. It blasted just about—at least once a week.

Q How do you mean air blasted?

A Just blew up.

Q And if they had shut it down, that would have solved that problem?

A I thought they shouldn't have been in there. No, I don't think—It might not have solved the thing. But when they mined around it, I figured—I thought it was too dangerous to work in there.

Q And you told that to Mr. Gipson?

A Yes.

Q And what did he tell you?

A To quit it.

Q What did he mean by that?

A To quit it, just stop, just put someone else in there. I could have quit it and went to some other stope. I didn't think that was the answer. But then they got it mined out I guess.

* * * *

[43] Q Do you ever recall any union representative promising to eliminate hazards in the mine?

A No.

Q Would that be true both before and after the fire?

A Yes.

Q Did you believe the union was in a position to eliminate hazards in the mine?

A I thought they must be doing—they should be doing something, because they was running an inspection. Otherwise, why bother going?

Q Would it be fair to say you thought that whatever this union could do had to be done through the Joint Safety Committee?

MR. HOWARD: I object to the form of the question.

Q (By Mr. Nelson) You don't have to be bothered by that.

A Say that again.

[44] Q Would it be fair to say you believe that whatever the union could do about safety had to be done through the Joint Safety Committee?

A I figure maybe—I don't know. If they would get together and have an inspection and see what was wrong, I imagine that's the way they would do it. I don't know.

Q Did you think the union had any responsibilities regarding safety besides the Joint Safety Committee?

A Oh, yeah, I imagine they do. I figured they should have some responsibilities on that.

Q And which ones did you think they should have?

A Same responsibility the federal or state got. I mean, they all work together on it. They should all be kind of responsible for what they are doing. Just like if I am painting your house, and I paint my side, and I had these other guys working for me, I would be responsible for the house, too. I got influence or something—

Q Would you like to take a break?

A That's all right. I got to get to work at quarter after 1:00 at least.

Q Now, you said you read some of the federal laws about mine safety?

A Yes.

Q It's true, isn't it, the federal government had the power to shut the mine down?

[45] A Yeah.

Q And Sunshine had the power to shut the mine down?

A I guess it could. It's their mine.

Q But the union didn't have that power?

A Not unless they wanted to strike or something.

Q So, there is a difference between the union's and the federal's rights?

A Oh, yeah—Well, I don't know. They did have—They called it a safety or something—They had a strike or something—I don't know—wildcat strike or something up at the mine on safety or something that's supposed to be—or something. I don't know. —to work for a couple weeks—I think that was more on wages or something.

Q That was after the fire?

A Yes.

* * * *

[66] Q Prior to May 2nd, 1972, did you know of any method by which you could get through smoke and various gases created by a fire without it affecting you?

A No; just a wet T'shirt or coat or something.

Q Was that something that was taught to you as a miner or something that just came to you watching TV or learing from your folks?

A Watching television or talking about wetting my clothes a little bit.

Q Did anybody ever talk of any surviving techniques such as moving toward fresh air or anything like that prior to May 2nd, 1972?

A No.

Q Did you ever have any training program by anyone at Sunshine while you were employed at Sunshine explaining to you how to survive an underground fire?

A No.

Q Did anybody from the union ever identify for you who was on the union Safety Committee?

A No.

Q If you had a complaint about job safety, who would you take that complaint to prior to May 2nd, 1972?

A Gipson. Usually that's the one I would see.

Q Why would you take your complaint to Mr. Gipson?

[67] A Because he changed right there by me at the time.

Q What position did you believe Mr. Gipson had with the union at that time?

A He was vice-president.

Q What did you feel Mr. Gipson was supposed to do with your complaint? What was your understanding of what he would do with your complaint?

A I didn't know.

Q What did you expect him to do?

A I thought he would go to the top or whatever, you know, or go to the company with whatever when he got a complaint.

Q Prior to May 2nd, 1972, what was your understanding as to who represented your interest when it came to job safety?

A Well, federal, state and the union.

Q Did anyone from the union prior to May 2nd, 1972, ever tell you that they could not help you out when it came to job safety, that you were on your own?

A No.

Q Did the union in any way cause you to believe that you should report safety violations to them, or safety concerns to them?

A No.

Q How was it you came to report those problems that

[68] you saw to Mr. Gipson?

A Well, he would go with the inspectors and such, so I figured he going with them, he could do some work with it.

Q Did anybody ever tell you—anybody from the union ever tell you about the fact they had safety meetings?

A No.

Q You knew about the safety inspections because you saw some of those; is that correct?

A Yes.

Q Were you ever asked any questions on any of these safety inspections by any members of the union or the state or the federal or the company representative?

A No.

Q In the union meetings that you attended, do you remember ever hearing any report from the safety meetings, Safety Committee?

A No.

Q Did anyone from the union ever inform you in any fashion, whether in writing or verbally by talking, that there were people in the union that you could talk to besides Mr. Gipson that had safety responsibilities?

A No. I just—I seen Gipson more than the rest of them.

Q Besies Mr. Gipson, do you know of anybody else who was on the Safety Committee?

[69] A At that time?

Q Yes, prior to May 2nd, 1972.

A No.

* * * *

[70] Q Did you as a miner working underground prior to May 2nd, 1972, rely upon your communication with Mr. Gipson and Mr. Flemming—

* * * *

Q (By Mr. Howard) —to communicate your concern about these safety things to the company?

A I figured they would tell me or somebody about it.

Q Did you also rely upon them to do something about it if that could be done?

A If they could, yes.

* * * *

[73] Q (By Mr. Howard) What else could you do as an individual miner if you wanted to get the condition corrected, or something that could be corrected?

A Well, corrected, I could do it.

Q What else could you do? Could you report that problem to anybody to see if management would correct it?

A The union, that's who I would report to. If I thought something was bad, and I could see that better than anybody else—I don't see mine inspectors every day or the federal people. But the union officials are there.

* * * *

ORAL DEPOSITION OF DONALD LONG
TAKEN 10/18/83

* * * *

[23] Q How would you describe John Rawson as a worker from your knowledge of—

A Oh, as far as I knew, he was an excellent miner and a good worker.

Q He worked for you on these exploration projects; is that what you said?

A Yes.

Q Was he the only one working on those projects, or was there a regular crew?

A There was maybe four miners. There would have been some other people that worked underground at the Sunshine also.

Q During those exploration projects, would you work [24] closely with John Rawson?

A Well, I would see him maybe every day.

Q Did you have occasion to talk to him—

A Yes.

Q —see the progress of his work and that sort of thing?

A Yes.

Q You did not go underground at all on May 2nd, did you?

A No.

Q Do you know when John Rawson's body was recovered?

A No, I don't recall.

Q Do you recall where it was recovered from?

A No, I don't.

Q At any time that you were in contact with John Rawson, either when he went underground in the Sunshine or when he was working on this exploration project, did you have any opportunity to discuss with him job safety or mining safety?

A I don't believe so, other than just routine things. Those fellows pretty much knew how to mine; they knew how to handle powder, they knew how to work equipment. Other than tell them, you drive this drift this direction and maybe get in there and tell them that you would like to turn it this way or that way, other than that, why you didn't really [25] tell them how to do their work.

Q Did John Rawson strike you as a levelheaded and safety conscious miner?

A Yes. He was.

Q Did you ever observe anything in the contact you had with him that would lead you to believe he ignored safety precautions during his work?

A No. I would think that he was a very—a good, safe worker, at least as far as I can recall. He was never accident prone or anything like that.

Q How about Wayne Johnson; what was the basis upon which you knew Wayne Johnson?

A I really didn't know him that well; just knew who he was, and maybe he would be on a drift or something. That would be—He worked in the Sunshine, and he would be one of the better miners. Probably down in some drift I would see him someplace.

Q What was it that caused you to remember Wayne Johnson as opposed to some other miners? Was there something special about him?

A No.

Q Some relationship you had in the past where you worked closely with him or something?

A No; just remember the name and the person.

Q Did you ever have any occasion to observe his [26] work habits?

A Not specifically, no. But I think that, generally speaking, he was a good miner from the areas he had been working. He was a good miner.

Q When you say "a good miner", does that include being safety conscious?

A Yes.

* * * *

ORAL DEPOSITION OF ALBERT C. WALKUP
TAKEN OCTOBER 18, 1983

* * * *

[5] Q What was your capacity with Sunshine on May 2nd, 1972?

A I believe I was mine superintendent then.

Q Where were you that day?

A I was in Coeur d'Alene, Idaho.

Q What were you doing in Coeur d'Alene?

A I was at a stockholders meeting, Sunshine Mining stockholders meeting.

Q Were you prior to the fire familiar with the Joint Union and Management Safety and Health Committee at Sunshine?

A Yes.

[6] Q Will you describe in your own words your understanding of the function of that committee prior to the fire?

A The committee, I believe they met monthly, and they made safety suggestions.

Q Who did they make suggestions to?

A Well, Bob Launhardt was the safety engineer at the time.

Q What do you mean by suggestions?

A I guess if they—anybody had a safety problem, that it was brought up at the meeting.

Q And then the committee would pass the suggestion along to Mr. Launhard; is that correct?

A Mr. Launhardt was part of the committee. It was a joint management-union committee, if I remember right. It's been a while ago.

Q What would happen to the suggestion next?

A I guess in some cases, if the safety engineer could act on them, and if he didn't feel he had authority, he would take it to the general manager.

Q Can you think of any instance on which the union could act on a suggestion on its own?

A No.

Q Would you describe in your own words your understanding of the types of suggestions that the safety engineer could have acted upon himself prior to the fire?

[7] A You mean what the safety engineer could have done without going to the manager?

Q Right.

A I really can't think of any offhand. I guess about anything that didn't affect the operation of the mine.

Q If it did, would it be fair to say if it did affect the operation of the mine, he would have to get some authority?

A Right.

Q How about if it required spending money but didn't affect the operation of the mine?

A I am not sure how much money he was able to spend without going to the manager. But I am sure he had to get approval if it was anything significant.

* * * *

[9] Q What was your general understanding, if anything, of the union's role with respect to safety prior to the fire?

A The union's role? I guess it was more to suggest, make suggestions?

Q Just to make this clear, who, to the best of your knowledge, had the final say-so on safety issues under the collective bargaining agreement between the Steelworkers and Sunshine prior to the fire?

A I guess it would have been Sunshine.

* * * *

[10] Q Are you familiar with the distinction between mandatory and advisory mine safety standards?

A Yes.

Q Would you describe in your own words the distinction between mandatory and advisory standards as it existed prior to the fire?

A Mandatory meant that it was a reg that you had to follow. Advisory was just what it says, it's advisory.

Q Was the company obligated prior to the fire to adhere to a mandatory safety standard?

A Yes.

Q Was the company, prior to the fire, obligated to adhere to an advisory safety standard?

A No.

Q Did the company, prior to the fire, have a policy with respect to adherence to advisory safety standards?

A Not that I recall.

Q Did the union, prior to the fire, have the power to make the company adhere to advisory safety standards?

A No, I don't believe so, unless it was bargained for.

Q How do you mean?

A Through the collective bargaining agreement.

[11] Q So, if it was written in the contract, they might have?

A Right.

Q To the best of your understanding, was it in the contract?

A There was a clause regarding safety, but I don't recall what it was.

Q But if it had the power, it would have been found in the safety clause?

A I would think so.

Q Were collective bargaining agreement negotiations part of your responsibility at Sunshine prior to the fire?

A No.

Q Do you have any information regarding the company's negotiating position with respect to safety issues prior to the fire?

A No.

Q Did you ever, prior to the fire, accompany the Joint Union-Management Safety and Health Committee on a walk around underground in the mine?

A I don't recall that I did.

Q Are you aware of any mine safety standard which, prior to the fire, Sunshine was not in compliance with?

A No.

Q Would that apply to both federal and state [12] standards?

A Yes.

Q Would that apply to mandatory as well as advisory standards?

A It applied to mandatory.

Q Have you at any time since the fire became aware of any mandatory safety standards that Sunshine was not in compliance with at the time of the fire?

A No.

Q Mr. Walkup, the plaintiffs have alleged that the union failed to require mine evacuation on the first evidence of smoke underground.

Could the union have required an evacuation?

A I don't really see how.

Q The plaintiffs have also alleged that the union was negligent in that it failed to require fire drills.

Could the union have required fire drills?

A I don't believe so, without going through the safety committee and through management.

Q Does that mean, then, that they had to have management approval?

A I would say so, yes.

Q And so with respect to that sort of thing, management would have the final word, too, wouldn't they?

A At that time, yes.

[13] MR. LEMPESIS: I ask you not to lead this witness, counsel.

Q (By Mr. Nelson) Mr. Walkup, the plaintiffs have also alleged that the union was negligent in that it failed to require adequate protection against spontaneous combustion of discarded timbers underground.

What if anything could the union have done about spontaneous combustion?

A Well, if they were smart enough to know about it, they could have griped at the safety committee meeting or approached the manager.

Q The plaintiffs have also alleged that the union was negligent in that it failed to initiate and instigate the formation of safety programs.

Could the union, in your opinion, have initiated and instigated the formation of safety programs prior to the fire?

A Yes.

Q How do you mean?

A At the union suggestion, it would have been at least taken into consideration by the management.

Q Okay. That, of course, once again, would be subject to management's final word?

A Right.

MR. LEMPESIS: I am going to object and ask you not [14] lead this witness.

Q (By Mr. Nelson) Who, if anybody, had the final word with respect to safety at the mine, Mr. Walkup?

A Final word?

Q Yes.

A The general manager.

• • • •

[17] Q What was your understanding of the purpose of the Joint Union-Management Safety Committee?

A The union would make suggestions regarding safety, regarding different things that it thought could be done.

Q All right. And what would be the purpose of eliciting suggestions from the union?

A To make a better place to work.

• • • •

[23] Q To your knowledge, did the union ever make any recommendations to the company, Sunshine Mine, prior to May 2nd of '72, with respect to unsafe working conditions or changes in safety conditions?

A I don't remember any.

Q Were you acquainted with the company policy regarding safety during your employ prior to '72, prior to May 2nd of 1972?

A Yes.

Q Would the company of paid any heed to recommendations of the union regarding unsafe working conditions?

A Yes.

• • • •

[32] Q Mr. Walkup, you testified in response to Mr. Lempesis's question that the union and Sunshine had a joint responsibility for safety; is that correct?

A Yes.

Q You later clarified that statement by saying that the union's responsibility was to make suggestions; is that also correct?

A Right.

Q In your opinion did the union have any other responsibility for safety?

MR. LEMPESIS: I object to that as calling for speculation and conclusion; and there is no foundation and competence of this witness to answer the question. [33] Go ahead.

THE WITNESS: Did they have any responsibility for safety other than suggestions?

Q (By Mr. Nelson) Yes.

MR. LEMPESIS: I also object on the ground it calls for a legal conclusion.

MR. NELSON: You must not want him to answer it, but—

MR. LEMPESIS: I am making my objection for the record, counsel.

THE WITNESS: They didn't really have any authority, no.

• • • •

ORAL DEPOSITION OF LARRY HAWKINS
TAKEN 10/19/83

• • • •

[22] Q (By Mr. Nelson) As between the union and management, under the collective bargaining agreement of 1970 who would have the final say-so on a safety issue?

A Well, kind of depends on which way the—really depends on what kind of issue we are talking about, whether it was minor or major. And I suppose it would go before the union committee, and they—or not the union committee but the Safety Committee, and they would resolve it as far as each is concerned.

• • • •

[33] Q Did you ever have occasion to hear any agent or representative of the United Steelworkers tell any member of their union that they were not responsible for safety training?

A No.

Q Did you ever have occasion to work with John Rawson?

A No.

Q How about the same question with respect to Mr. Glen Rossiter?

A No.

Q Mr. Wood?

A No.

Q Mr. Wayne Johnson?

A No.

Q Did you ever observe them working that you can recall?

A No, I don't recall.

Q What was your understanding of the purpose of the Joint Safety Committee prior to May 2nd of 1972?

A If a problem arose, why it was brought before the Committee. They resolved it, the problem.

Q And who, to your knowledge, prior to May 2nd, 1972, [34] were the responsible parties on the Joint Safety Committee?

A I don't have any idea.

Q Were you aware prior to May 2nd, 1972, that the union participated as a part of that Joint Safety Committee?

A No, I am not aware.

• • • •

ORAL DEPOSITION OF
LESLIE MERRIAL MOSSBURGH
TAKEN OCTOBER 19, 1983

• • • •

[3] Q What did you do before you were retired?

A Well, just before I retired, maintenance supervisor.

Q At Sunshine?

A Underground at the Sunshine. And previous to that [4] I worked in the drill shop and on the mechanic crew.

• • • •

[6] Q Did you ever, prior to the fire, ask a union representative to file a safety grievance?

A No.

Q Did you ever, prior to the fire, make any complaint or request regarding safety, other than a request to file a grievance, to any union representative?

A No.

Q You never had any problems with safety?

A Never had any problems. Usually, if I did, I would go to the foreman, or whoever was my boss, and tell him.

Q Did you have any contact with any member of the Steelworkers International Union prior to the fire?

A Just one, Laverne Melton. But I don't remember if he was—Oh, he was just local, then—or if he was already with the International—

Q Were you, prior to the fire, familiar with the Joint Union-Management Safety and Health Committee of Sunshine?

A Yes.

Q Would you describe in your own words your understanding of the function of the Joint Union and Management Safety and Health Committee prior to the fire?

A Well, they were supposed to bring up these hazards and hash them out between them and then bring it back to the [7] body of men and tell them what came out of it.

Q What contact, if any, did you have with the Joint Union and Management Safety and Health Committee prior to the fire?

A Just talking man to man, that's all; never did I take it as a—at a formal grievance or anything to any of them.

Q Did you know the union representatives on the Joint Safety Committee were prior to the fire?

A I knew them at the time. I couldn't tell you what the names were now.

Q You did know them at the time?

A Yes.

Q Do you remember any specific conversations with them about safety prior to the fire?

A No, I don't.

Q What power, if any, did the Joint Safety Committee have to influence safety decisions at Sunshine prior to the fire?

MR. LEMPESIS: I would object, counsel, as to the word—form of the question with the use of the word "power". And I would also object to it as it calls for speculation and also a legal conclusion of this witness. He is not competent to testify to that.

You may answer.

[8] Q (By Mr. Nelson) What power, if any, did the Joint Safety Committee have to influence new safety decisions at Sunshine prior to the fire?

A They must have had some, because I know we had to make different changes like air doors and different things like that. It was done by somebody; that is, it was done by the union. The company wouldn't have went to all that expense to change the air doors.

Q What is it that leads you to believe that the union representatives on the Committee had something to do with this air door problem?

A Well, because they were built wrong, and they just kept telling them that they had to change the design of them. And they went through about three designs before they got one they kept.

* * * *

[10] Q Do you have any information regarding the union's position on safety prior to the fire?

A It was very strict, too.

Q And what makes you say that?

A Well, for instance, if somebody neglected to fix the brakes on a motor, then you got it from—The union went to the company, and then the company came back

on you. That was just one instance of what—how they operated.

Q Can you think of any other specifics?

A Well, I have know of times when the declared that something wasn't safe, and then the mechanics would have to go fix it, because I was just on the mechanical end of it.

Q Okay. Who declared it was unsafe?

A Well, evidently somebody—some workman must have turned it in to the union, and they went to the company, and then the company would give us a direct order to repair whatever it was.

[19] Q You also mentioned, I believe, that safety was discussed at almost all union meetings?

A Almost all of them I went to.

Q The meetings which you attended prior to May 2nd, 1972, could you generally describe what types of things specifically were discussed about safety at the union meetings?

A Well, usually it was unsafe practices that the men themselves were doing.

Q Would the men at the union meetings make the union or other members aware of problems with safety?

A Yes.

Q And how was that addressed at the union meetings? If someone came in and said there was a safety problem, what happened then, if you know?

A Well, like any other meetings, that is, one man would get up and tell what was going on on his particular place, and it was a safety hazard, then the man on the floor took it up; and then if it was real bad, why I guess they went to the company with it, because usually they got straightened out.

* * * *

[21] Q How were you acquainted with Mr. Wood, Mr. Mossburgh?

A Mr. Wood was the hoistman on 3700, and I worked on the hoists. So, I was in that hoist room lots of times.

Q During a given week, how often would you see Mr. Wood?

A Every day.

Q Every day?

A Yes.

Q Did you ever have an opportunity to observe him working?

A Oh, yes.

Q In your opinion or having observed Mr. Wood work, did he appear to be a conscientious worker?

A Very.

Q Did he appear to work in a safe manner?

A Yes.

Q Did Mr. Wood follow instructions to your knowledge?

A Any time I was around him, he did, yes.

Q When you were at the union meetings, did you ever see Mr. Wood at those union meetings?

A I don't recall if I did or not.

Q You also indicated you knew Mr. Wayne Johnson [22] fairly well?

A Yes.

Q And how did you know Mr. Johnson?

A He was the shifter. And so I came in contact with him, because I worked out of the shop, and I had to repair his machinery as well as the others.

Q How often would you see him during a given work week prior to May 2nd of '72?

A During the work week, maybe once. I might have seen him every day for a week, and I might go for several days and never see him.

Q Fair enough.

Did you ever have occasion to see Mr. Johnson at work?

A Yes.

Q Did he appear to be a conscientious worker?

A I thought he was.

Q Did he appear to work in a safe manner?
A Yes.

* * * *

ORAL DEPOSITION OF MERLIN MILTON HOFFMAN
TAKEN OCTOBER 19, 1983

* * * *

[4] Q By whom were you employed at the time, before you retired?

A Sunshine Mining Company.

Q How long had you been employed by Sunshine Mining Company?

A Since 1969.

Q Maybe to shorten this up a little bit, I have read prior testimony that you have given in other depositions, and from that testimony I learned that you were the safety engineer at the Sunshine Mine at one period of time. When was that, sir?

A That was from 1968 until probably 1970, roughly in there.

Q What was your position at Sunshine Mine from 1970 [5] through the day of the fire on May 2nd, 1972?

A I think the title was Surface Foreman at that time.

* * * *

[20] Q Were you a member of the Joint Safety Committee?

A Yes.

Q For what period of time?

A Well, while I was safey engineer.

Q What kind of things do you recall would be the subject of conversation or agenda items at a Joint Safety Committee meeting? Do you recall?

A Oh, there were common nature, loose rock, maybe powder primers, which was always a big item. Those were the major items.

* * * *

[24] Q When you referred a minute ago to your safety meetings, are you referring to the Joint Safety Committee meetings?

A Yes.

And those meetings were attended—You tell me. Who attended those meetings?

A As I reca", the union had a representative from the surface, one from the mill, and then maybe one or more from underground.

And did the company also have people—

A Yes.

Q —including yourself?

A Yes.

What was the union's participation, or can you generally describe the union's participation at a Joint Safety Committee meeting? What did they do, if anything?

A Well, usually they would have a list of items that they would like to have looked at or corrected or taken care of, whichever way you want to express it, plus the fact that we might discuss a general first aid session for all employees, scheduling of some special event.

Q Do you recall if the union ever suggested a general training session of all employees for any purpose to—for a safety purpose?

[25] A They may have, but I don't recall of a specific instance.

Q Were you, at the Joint Safety Committee meetings, ever notified by the union or their representatives of any deficiencies or problems that they observed with safety in the mine?

A Yes.

Q Can you give me any example of such a problem or deficiency that arose?

A Common one was probably, like I say, primers, powder, ladders, possibly a defective piece of equipment, something of this sort.

Q What action, if any, would be taken by the committee on such a complaint or a statement by the union of this deficiency or problem?

A Well, the company—I would notify the mine superintendent or the mechanical foreman or electrical, whichever it happened to be, that this would be taken care of before such and such a date.

Q You mean you just told them to do it and correct it?

A That's correct.

Q And you did have the authority to do that?

A Yes.

Q And your authority to do that, was that derived [26] because you were the safety engineer?

A Right.

Q Following your tenure as safety engineer, do you know if your successor, the next safety engineer was also on the Joint Safety Committee?

A I am quite sure he was.

Q Were the self-rescuers, were they provided to each underground employee as issued equipment?

A No.

Q Where were the self-rescuers kept?

A On the main stations, on the shaft stations.

Q Just hanging on a hook or—

A They were in a cabinet with a glass enclosed place.

Q What kind of safety equipment, if any, was issued to miners underground?

A Well, it was mandatory that they had, of course, lamps, belt, pipe wrench, hard hat. And then we also issued individual first aid kits.

Q I am curious about the pipe wrench. Is that a piece of safety equipment?

A I always considered it as such. Underground its kind of a universal tool.

Q Did you ever have any problem with your employees walking off with these issued pipe wrenches that you recall? I am speaking of before the fire.

[27] A Oh, yes. They were supposed to have turned them in, and—but sometimes they weren't.

Q Did you ever discuss safety equipment such as helmets or belts or lamps or pipe wrenches or first aid kits at the Joint Safety Committee meetings?

A Yes.

Q Do you recall what you may have discussed?

A We tried various types, particularly hard hats, goggles, safety shields, boots; and I would issue these to various miners to give them a try. And they would report back as to good, bad or indifferent or useless.

Q Who instigated, or who would suggest items such as goggles or safety shields? What caused you to bring about giving them a try?

A At the end of each month I had to prepare a report on the type of injuries. And from this, if one particular type of injury—first, rock injury, which seemed to be prevalent, then it was discussed; we would discuss this, plus the fact that we should try this or try that or something else.

Q But you tried—

A We were trying all the time.

Q Do you recall if members of the union or the union's representatives on the Joint Safety Committee ever suggested trying some of these things, safety changes or new [28] safety equipment?

A If they did, I would assume we would have tried them.

Q You inspected—I am trying to remember what you said. —how frequently when you were safety engineer?

A I was down ever day. But with the union and with the state and federal, the union once a month. I am sure that's what it was. And with the state and federal, whenever they came in.

Q Did the union ever specifically request a special opportunity to inspect for any purpose?

A They may have. They would lots of times—I wouldn't say lots of times, but at times ask me on my daily rounds to stop and look at a specific item.

Q At a specific item?

A Right, to see what they thought were recommendations on whether it was a maintenance problem or a safety problem.

• • • •

ORAL DEPOSITION OF ROBERT MATTHEWS
TAKEN 10/20/83

• • • •

[6] Q Do you recall ever overhearing any discussion of mine safety at any local union meeting you attended prior to the fire?

A No.

Q Did you ever ask any Steelworker officer or representative to negotiate for any changes in the safety clause in the contract between Sunshine and the union?

A No.

Q Do you know of anyone else who ever asked any union representative to negotiate for any changes in the safety clause in the contract between Sunshine and the union?

A No.

Q Did you ever, prior to the fire, ask a union representative to file a safety grievance?

A No. That's one thing I never have done, filed a grievance of any kind.

Q Did you ever, prior to the fire, make any complaint or request regarding safety, other than a request to file a grievance, to any union representative?

A No.

Q Did you ever have any contact with any member of the Steelworkers International Union prior to the fire?

A Any contact—You mean talking—

Q Any kind of contact, see them, hear them—

[7] A Except what meetings I was to during strike time. As I say, that's all I ever—

Q Do you specifically recall someone had a meeting that was known to you to be a member of the International Union as opposed to the local union?

A No.

Q Were you, prior to the fire, familiar with the Joint Union and Management Safety and Health Committee at the mine?

A Before you mean?

Q Yes.

A No.

Q Did you ever see the committee that had union people on it and management people on it and walking around inspecting the mine?

A Well, they could have been, because at that time I was swamper on the 3700 level, and they could have been.

Q You just don't recall?

A No.

Q Were you aware prior to the fire that a Joint Union and Management Safety Committee existed?

A No. It never occurred to me. So, I don't know. Never heard anything. It's been so long ago, I don't know.

• • • •

ORAL DEPOSITION OF RICHARD NICKELBY
TAKEN 10/20/83

• • • •

[6] Q Did you ever, prior to the fire, ask a Steelworker representative to file a safety grievance?

A I don't think so.

Q Did you ever, prior to the fire, make any complaint or request regarding safety, other than a request to file a grievance, to any Steelworker representative before the fire?

A I don't think so.

Q Did you have any contact with any member of the Steelworkers International Union prior to the fire?

A Not to my recollection.

Q Were you, prior to the fire, familiar with the Joint Union and Management Safety Committee at Sunshine?

A I don't think so. I don't remember it.

Q Did you ever see a committee made up of some union people and some management people walking around doing inspections prior to the fire?

A I don't remember whether I did or not.

Q Do you have any recollection or understanding of the function of the Joint Union and Management Safety and Health Committee prior to the fire?

A No.

• • • •

[15] Q Had you ever seen the self-rescuers before that day?

A I never seen one, no.

Q Had you ever heard of them?

A Yes.

Q Who had told you about the self-rescuers?

A Nobody. They have big boxes down there that had self-rescuer written on the outside of them.

Q Had anyone showed you how to use them prior to that day?

A No.

• • • •

[17] Q Had anybody ever explained to you, prior to the fire, that—what the arrangement was between the company and the union with regard to any safety conditions in the mine?

A Not that I remember.

Q Had you ever had occasion to inquire of anybody as to who you should go to with regard to any safety complaints or suggestions that you had?

A I don't remember.

Q During the period of time that you worked at the Sunshine, do you remember hearing any talk about any safety committees?

A I don't remember any.

• • • •

[23] Q During the period of time that you were employed at Sunshine, were you ever involved in any evacuation drills in the mine?

A Not that I remember.

Q Were you ever involved in any fire drills, which may have been the same thing?

A Not that I remember.

Q Did you attend any meetings that were safety orientation meetings or teach you how to work safely underground or use any safety equipment or anything like that?

A No, not that I remember.

• • • •

ORAL DEPOSITION OF ROBERT FOLLETTE
TAKEN 10/21/83

• • • •

[7] Q Did you join the Steelworkers at that time?

A Eventually. You either did, or they took it out anyway.

Q Were you ever an officer of the Steelworkers prior to the fire?

A No.

Q Were you ever a member of any committee within the Steelworkers prior to the fire?

A No.

Q How often, if at all, did you attend local union meetings prior to the fire?

A Well, because of my living, and I have always lived in Coeur d'Alene, I didn't—I don't suppose I attended over 50 percent, probably.

Q At any of the meetings you did attend, was mine safety ever discussed prior to the fire?

A I just don't recall.

Q It could have been discussed; you just don't remember. Is that right?

A Anything is possible, I guess.

Q Prior to the fire at Sunshine, did you ever ask any union representative to negotiate for any changes in the safety clause in the contract between Sunshine and the Steelworkers?

A Not to my knowledge.

[8] Q Do you know of anyone who ever asked any Steelworker representative to negotiate for any changes in the safety clause in the contract between Sunshine and the Steelworkers prior to the fire?

A No one specifically. There was a generalization about it, but I don't recall.

Q What do you remember generally about safety clauses in negotiations?

A Well, it's kind of a common thing among men. Wherever you work, they discuss safety a little bit among yourselves. But as far as putting it to negotiations, I don't recall that they did.

Q Do you recall ever discussing safety with any union officer or representative prior to the fire?

A No.

Q Do you remember any specific discussions about safety with anyone prior to the fire?

A No.

Q Did you ever, prior to the fire, ask any Steelworker officer or representative to file a safety grievance?

A No.

Q Did you ever, prior to the fire, make any complaint or request regarding safety, other than a request to file a grievance, to any Steelworker representative?

[9] A I don't recall any.

Q Did you have any contact at all with any member of the Steelworkers International Union prior to the fire?

A I'm quite sure I didn't.

Q Were you, prior to the fire, familiar with the Joint Union and Management Safety and Health Committee at Sunshine?

A Well, they had one. We had local men within that that came through now and then. But I don't know if they were company men or joint men. I know we had company safety men that came through. But that might not be what you are interested in.

Q Were you aware of any committee made up of management people and union people that dealt with safety issues prior to the fire?

A There could have been. I don't recall.

* * * *